

DECISION

Dispute Codes OPR OPB MNR FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession, a Monetary Order, and to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 2, 2009 the Landlord served each Tenant with the Notice of Direct Request Proceeding via registered mail. Based on the written submissions of the Landlord, I find that the Tenants have been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a Monetary Order for unpaid rent; and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant;
- A copy of a residential tenancy agreement which was signed by all parties on October 7, 2009 for a fixed term tenancy beginning October 15, 2009 for the

monthly rent of \$1,350.00 due on 15st of the month and a security deposit of \$675.00 and a pet deposit of \$675.00 were to be paid on or before November 15, 2009; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, November 19, 2009 with an effective vacancy date of November 29, 2009 due to \$1,350.00 in unpaid rent;
- An explanation of how the Tenants had paid the balance of the security deposit and \$125.00 towards November rent on November 28, 2009 leaving a balance owing of \$1,225.00 for November 2009 rent.

Documentary evidence filed by the Landlord indicates that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent by leaving it personally with the male Tenant who signed the Landlord's copy of the notice. The service was conducted in the presence of a witness.

Analysis

Order of Possession - I have reviewed all documentary evidence and accept that the Tenants have been served with notice to end tenancy as declared by the Landlords. The notice is deemed to have been received by the Tenants on November 19, 2009, and the effective date of the notice is November 29, 2009 pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the Tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Monetary Order – I find that the Landlord is entitled to a monetary claim and the Landlord is entitled to recover the filing fee from the Tenants as follows:

Unpaid Rent which was due November 15, 2009	\$1,225.00
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD	\$1,275.00

As the Landlord has not made claim to retain the security deposit, I hereby order that the Tenants' security deposit of \$675.00, currently held in trust by the Landlord, be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Respondent Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$1,275.00. The order must be served on the respondent Tenants and is enforceable through the Provincial Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 17, 2009.

Dispute Resolution Officer