

## DECISION

Dispute Codes - OPR, MNR, FF

### Introduction

This matter was conducted 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 and a monetary order due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 28, 2010 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Act states a document sent by mail is deemed served on the 5<sup>th</sup> day after it is mailed.

Based on the written submissions of the landlord, I find that the tenant has 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 the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on May 26, 2008 for a month to month tenancy beginning on June 1, 2008 for the current monthly rent of \$623.00 due on the 1<sup>st</sup> of the month;
- A copy of a tenant's account statement showing rent owed for February, March and April of 2010;
- A copy of a letter from the landlord to the tenant dated May 5, 2009 advising the tenant of her rent contribution for the period of June 1, 2009 to May 31, 2010 will be \$623.00 per month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on April 13, 2010 with an effective vacancy date of April 26, 2010 due to \$1,869.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the months of February, March and April 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent via registered mail on April 13, 2010.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days.

### Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on April 18, 2010 and the effective date of the notice is amended to April 28, 2010, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant 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 tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

### Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,919.00** comprised of \$1,869.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced 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: May 06, 2010.

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Dispute Resolution Officer