

DECISION

Dispute Codes OPR MNR

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 for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 19, 2010 at 3:11 p.m., the Landlord served Tenant (2) with the Notice of Direct Request Proceeding in person at the rental unit. Based on the written submissions of the Landlord, I find that Tenant (2) has been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for Tenant (2); and
- A copy of a residential tenancy agreement which was signed by all parties on December 29, 2009 for a fixed term tenancy beginning January 1, 2010 and set to switch to a month to month tenancy after December 31, 2010 for the monthly rent of \$1345.00 due in advance of the 1st of the month and a deposit of \$672.50 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, August 3, 2010 due to \$1345.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the Tenants' door on August 3, 2010 at 10:00 a.m. in the presence of a witness.

Analysis

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlords have applied for a monetary Order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*. In this case only one of the two Tenants has been personally served with the Notice of Direct Request Proceeding document. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only Tenant (s) who has been properly served with Notice of this Proceeding. As there is insufficient evidence to support that Tenant (1) has been properly served the Application for Dispute Resolution as required, the monetary claim against Tenant (1) is dismissed without leave to reapply.

The Landlord has requested an Order of possession against both Tenants. Section 89(2) of the Act determines that the Landlords may leave a copy of the Application for Dispute Resolution related to a request for an Order of possession at the Tenants' residence with an adult who apparently resides with the Tenant. As both Tenants are signatories to the tenancy agreement I have determined that both parties have been sufficiently served with the portion of the Application for Dispute Resolution relating to section 55 of the Act, requesting an order of possession.

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 Landlord. The notice is deemed to have been received by the Tenants on August 5, 2010, and the effective date of the notice is August 15, 2010, 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 and I hereby grant the Landlord an Order of Possession.

Monetary Order – The evidence supports that the Tenants have failed to pay the August 1, 2010 rent in violation of section 26 of the Act which provides that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order as follows:

Unpaid Rent which was due August 1, 2010	\$1345.00
--	-----------

TOTAL AMOUNT DUE TO THE LANDLORD	\$1345.00
---	------------------

Any deposits currently held in trust by the Landlord are to 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 **\$1345.00**. The order must be served on the respondent Tenant 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: September 01, 2010.

Dispute Resolution Officer