



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DIRECT REQUEST DECISION

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that the landlord served each tenant with the Notice of Direct Request Proceeding in person on March 12, 2009 at 8:30 a.m.

Based on the written submissions of the landlord, I find the tenant has been duly 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 utilities; to keep all or part of the security deposit; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*. I have reviewed all documentary evidence submitted by the landlord.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service to the tenant of the Notice of Direct Proceeding
- A copy of a residential tenancy agreement which was signed on December 5, 2008 indicating \$700.00 per month rent due on the first day of the month, a security deposit of \$350.00 paid on August 27, 2008.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 18, 2009 with a vacancy date of February 28, 2009, 2009 for \$770.00 in rental arrears and \$420.00 for utilities owed.
- A copy of proof of service of the Ten-Day Notice
- No ledger of the tenant's account was submitted into evidence. However, a list of what the landlord claims is owed by the tenant was included in the "*Details of the Dispute*" section of the landlord's application.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay \$420.00 hydro, and rent owed including a \$50.00 arrears for January, \$700.00 arrears for February and \$790.00 combined hydro/late fees/rent for the month of March 2009. The total amount being claimed was \$1,960.00.

The evidence indicates that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by the landlord on February 18, 2009 by posting it on the door at 8:00 p.m. with a witness present. 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 and did not pay the arrears within five days. I accept that the tenant has been served with notice to end tenancy effective on March 18, 2009 as declared by the landlord.

Analysis

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.

In regards to the claimed arrears I find that the amounts listed on the application conflict with some of the amounts claimed in the Ten-Day Notice. The Notice shows rental arrears as of February 18, 2009 in the amount of \$770.00, while in the application, the amounts owed for January and February only add up to \$750.00. The amount shown as owed for March combines unknown and unverified figures. While a late fee is mentioned, there is nothing in the tenancy agreement showing that the landlord is entitled to impose late fees. No rental ledger has been included to show the tenant's rent payments and rent charges.

In regards to the claim for utilities, I draw attention to section 46 (6) which states that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, then the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section. I find that the Ten-Day Notice dated February 18, 2009, indicated \$420.00 for utilities for which it states the landlord made a written demand February 1, 2009, which was only 17 days prior to the Notice.. Moreover, no copies of the utility invoices nor of the landlord's written demand were submitted into evidence to support the claim. I find that the landlord had prematurely included this debt in the Notice which is not permitted prior to the expiry of 30 days as specified in the Act. Therefore, I find I must dismiss the portion of the application relating to the claims for utilities.

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 Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I find that while it is clear that the landlord is owed some money by these tenants, the landlord has failed to meet the burden of proof in establishing and justifying that some of the amounts being claimed were justified. I find that the landlord has succeeded in proving entitlement for \$800.00 comprised of \$50.00 rental arrears

for the month of January 2009, \$700.00 rent owed for the month of February 2009 and the \$50.00 fee paid by the Landlord for this application. I order that the landlord may retain the security deposit and interest being held in the amount of \$351.82 in partial satisfaction of the claim and grant an order for the balance due of \$448.18. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

March, 2009

Date of Decision

Dispute Resolution Officer