



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
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 and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 24, 2009, the landlord served the tenant with the Notice of Direct Request Proceeding. The applicant provided a Proof of Service form indicating that on February 19, 2009 the landlord served the tenant personally with the Notice of Direct Request.

Based on the written submissions of the landlord, I find the tenant has been personally 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 accumulated rental arrears, late fees and NSF cheque charges, to retain the deposit and filing fee received from the tenant and reimbursement 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.

Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a copy of the Application for Dispute Resolution which provided that the Notice to End Tenancy was personally served on the tenant by an agent for the landlord on February 12, 2009.

The purpose of serving documents under the *Act* is to notify the person being served of their failure to comply with the *Act* and of their rights under the *Act* in response. The landlord is seeking to end the tenancy due to this breach and the landlord has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy.

Analysis

As the landlord has supplied the evidence of proof of service of the Notice to End Tenancy, I find that the tenant was properly served with the 10 day Notice to End Tenancy. Also submitted into evidence was a copy of the tenant's rental account payment history and a copy of the tenancy agreement signed on November 24, 2008. Terms in the agreement included charges of late fees of and returned cheque fees of \$25.00 each that will be imposed when payments are late or cheques returned by the bank. The agreement also indicated that a security deposit of \$862.50 was held in trust for the tenant by the landlord since June 2, 2008. The Ten-Day Notice dated February 12, 2009 indicated that the tenant owed \$3,980.00 in rental arrears and on the Application for Dispute Resolution the landlord stated that, on February 17, 2009, the tenant paid \$440.00 towards the arrears leaving a balance of \$3,540.00.

I find that the tenant has not paid all of the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

I find that the landlord is entitled to receive total rental arrears, late payment and returned cheque charges accumulated as of February 17, 2009 in the amount of \$3,540.00 and is also entitled to reimbursement of the \$50.00 fee paid by the landlord for this application for total entitlement of \$3,590.00. I order that the landlord retain the security deposit and interest of \$870.03 in partial satisfaction of the claim leaving a balance due of \$2,719.97.

Conclusion

I hereby issue an Order of Possession in favour of the landlord 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 hereby grant the Landlord an order under section 67 for \$2,719.97. 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