



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 on April 17, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Residential Tenancy Act determines that a document sent by registered mail is deemed to have been served in five days.

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; 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 by the parties indicating \$1,500.00 per month rent and that a deposit of \$1,500.00 was paid on May 15, 2008.
- An unsigned, undated copy of a 10 Day Notice to End Tenancy for Unpaid Rent purporting to be effective on April 11, 2009.

Analysis

I find that section 46 (1) of the Act permits a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However section 46 (2) of the Act requires that a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

I find that section 52 of the Act states that, in order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

I find that the Ten-Day Notice to End Tenancy for Unpaid Rent was not signed nor dated by the landlord prior to being issued to the tenant. As such, I find that this Notice was not valid and therefore can not be enforced as it failed to comply with the provisions in the Act pertaining to the notice.

I also note that the amount of security deposit held by the landlord may not exceed the equivalent of one-half month's rent in order to comply with section 19 of the Act.

Conclusion

Given the above, I find that the landlord's application must be dismissed in its entirety without leave to reapply.

May 2009

Date of Decision

Dispute Resolution Officer