



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 April 23, 2009.

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 \$1,250.00 per month rent due on the first day of the month and utilities of \$125.00 per month. A security deposit of \$625.00 and was paid on September 15, 2008.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 10, 2009 with a vacancy date of APRIL 20, 2009 for \$1,250.00 in rental arrears and \$125.00 for utilities owed for which a written demand was issued on April 1, 2009.
- A copy of proof of service of the Ten-Day Notice

No tenant ledger showing the tenant's rental account was submitted into evidence. Documentary evidence filed by the landlord indicates that the tenant had failed to pay \$1,250.00 rent owed for the month of April 2009 as well as utilities for hydro in the amount of \$125.00 pursuant to terms contained in the tenancy agreement. The evidence indicates that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by the landlord in the morning on April 10, 2009 by giving it to the tenant in person. 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 April 20, 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.

I also find that the landlord has proven entitlement to compensation for accrued rental arrears owed in the amount of \$1,250.00.

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 March 5, 2009, indicated \$125.00 for utilities for which the landlord made a written demand April 1, 2009. I find that the landlord had prematurely included this debt in the Notice which is not permitted prior to the expiry of 30 days from when the written demand has been made, as specified in the Act. Therefore, I find I must dismiss the portion of the application relating to the \$125.00 utilities owed.

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 the landlord is entitled to monetary compensation under section 67 in the amount of \$1,300.00.00 comprised of rental arrears for April 2009 in the amount of \$1,250.00 and the \$50.00 fee paid by the Landlord for this application. I order that the landlord may retain the security deposit and interest held of \$627.77 in partial satisfaction of the claim and grant an order for the balance due of \$672.23. 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.

May 2009 _____

Date of Decision

Dispute Resolution Officer