

DECISION

Dispute Codes OPR MNR 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 May 13, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding in person with the tenant at the rental unit. The landlord received the Direct Request Proceeding package on May 13, 2009 and initiated service May 13, 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, whether the landlord may retain the deposit and 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.

Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a copy of the Application for Dispute Resolution which states "Has always been late with rent, also smokes in the suite etc.". The landlord filed the application on May 12, 2009 stating that an amount of \$800.00 is outstanding for unpaid rent but does not specify which month is outstanding, April or May 2009.

The landlord provided confusing evidence on the 10 Day Notice to End Tenancy for Unpaid Rent as the notice was signed and issued on May 4, 2009 showing that April 2009 rent of \$800.00 was outstanding which leads to the question of whether the tenant paid rent for May 2009 or not. Is it that the tenant actually paid April rent, but paid it late, or is it that on May 4, 2009 the tenant had not paid both April and May rent.

Analysis

In the presence of ambiguous evidence I find that clarification is required to determine if the 10 Day Notice for Unpaid Rent was issued in accordance with the Residential Tenancy Act or if this is a case whereby a 1 Month Notice to End Tenancy for cause should have been used.

Conclusion

Based on the aforementioned, I order that the direct request proceeding be reconvened in accordance with section 74 of the Act. I find that a conference call hearing is required in order to determine the details of the 10 Day Notice to End Tenancy. Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the tenant within **three (3) days** of receiving this decision in accordance with section 88 of the Act.

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: May 20, 2009.

Dispute Resolution Officer