

DECISION AND REASONS

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 May 15, 2009 the landlord personally served the tenant with the Notice of Direct Request Proceeding at the rental unit address. The landlord received the Direct Request Proceeding package on May 14, 2009 and initiated service the next day. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the day it is personally served.

Based on the written submissions of the Landlord, I find the tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents.

The application for dispute resolution indicates that the landlord is renting out rooms. The landlord has not provided evidence of the nature of the tenancy and if in fact this is a tenancy as defined under the Act, or a living accommodation which includes shared bathroom and kitchen facilities between the property owner and tenant.

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 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 provided that the Notice to End Tenancy was served by posting the notice to the door of rental unit on May 2, 2009. The Notice to End tenancy is dated May 1, 2009 which is the day in the month that the rent is due. The landlord provided a proof of service document which indicates that the Notice to End Tenancy was served to the tenant by posting the notice to the door of the rental unit by the landlord on May 2, 2009 at 1:40 pm.

The landlord submits that the Notice to End Tenancy was issued and signed by the landlord on May 1, 2009 as the "landlord was bedridden recovering from back surgery and the 1st was the only opportunity to get landlords signature otherwise it was going to be postponed for a few days later."

Section 46 of the Act determines that a landlord may 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. The landlord has issued a Notice to End Tenancy for Unpaid rent on the date the rent was due, with an effective vacancy date ten days later, May 10, 2009. The landlord did not issue the notice after the day on which the rent is due and the landlord has not made application to amend the notice.

A dispute resolution officer may only amend a notice, on application, where the person receiving the notice knew, or should have known, the information that was omitted from the notice, and it is reasonable in the circumstances. In this case I find that the Notice to End Tenancy was issued prematurely, prior to the time the rent was due.

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

Analysis

I find that the Notice to End Tenancy for Unpaid Rent issued on May 1, 2009 and deemed served to the tenant effective May 5, 2009; three days after posting, fails to meet the standard required by the Act. The landlord has not applied to amend the Notice to End Tenancy. I have determined that the Notice to End Tenancy for Unpaid rent issued on May 1, 2009, the rent due date, is of no force or effect. The landlord is at liberty to issue a new Notice to End Tenancy and make a new application for dispute resolution.

I also find that I am unable to determine if this tenancy is one which is defined under section 4 of the Act; setting out those arrangements to which the Act does not apply.

Conclusion

Having found that the landlord has failed to issue a Notice to End Tenancy as required by the Act I have determined that the Notice to End Tenancy issued on May 1, 2009 is of no force or effect. I have also been unable to determine if this application relates to a tenancy to which the Act applies. The landlord is at liberty to issue a new Notice to End Tenancy and to submit a new application for dispute resolution. Any future application for dispute resolution should include adequate evidence of the nature of this tenancy so that jurisdiction may be assessed.

Dated May 20, 2009.

Dispute Resolution Officer