



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DIRECT REQUEST DECISION

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

The 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 June 10, 2009, the landlord served the tenant with the Notice of Direct Request Proceeding in person at 4:00 p.m. 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 rental arrears, to retain the security deposit from the tenant and reimbursement for the cost of the Application for Dispute Resolution, based on the 10-Day Notice to end Tenancy dated May 29, 2009, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (the 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 and a "Proof of Service" form stating that the Ten-Day Notice to End Tenancy, was served by posting it on the tenant's door on May 29, 2009 at 4:00 p.m. in front of a witness. Section 90(c) provides that, if given or served by attaching a copy of

the document to a door or other place, service to the tenant is deemed to have been accomplished on the 3rd day after it is attached.

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. I find that the tenant was properly served with the Ten-Day Notice to End Tenancy for Unpaid Rent.

Analysis

I note that the Landlord's Application for Direct Request indicated that rent owed by the tenant was \$1,050.00 for May 2009 and that the tenant also owed \$25.00 late fees and \$50.00 NSF charges, for a total claim of \$1,125.00. I find that the Ten-Day Notice to End Tenancy for Unpaid Rent shows rental arrears of \$1,125.00. Evidently, in addition to the \$1,050.00 owed for rent, this amount also included the \$25.00 late payment and \$50.00 returned cheque charges.

Section 46 (1) of the *Act* states 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 *Act* provides the following definition of rent:

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;*
- (b) a pet damage deposit;*
- (c) a fee prescribed under section 97 (2) (k) [power to make regulations in relation to refundable and non-refundable fees];*

Regulation 7(1) (c) and (d) considers late fees, NSF fees and bank charges to be non-refundable fees and states that a landlord is entitled to impose:

(c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

Under section 7(2) of the Regulation administration fees for late payment or returned cheques are limited to a maximum of \$25.00 and cannot be imposed unless there is a specific term for the charges in the tenancy agreement.

While a landlord is entitled under certain conditions and within certain limitations to impose the fees, and is at liberty to claim compensation for these funds in the Dispute Resolution Application, they cannot be included as *rent* purportedly owed and shown on the Ten-Day Notice to End Tenancy for Unpaid Rent . These charges do not meet the definition of “rent” in the Act. .

While section 52 of the Act specifically prescribes amendment of a noncompliant effective date in regards to the end of the tenancy indicated in a Notice to End Tenancy, there is nothing in the Act that permits a Dispute Resolution Officer to retroactively amend any of the other data contained in a Notice to End Tenancy. In addition to being beyond my authority, I find that correcting a Notice issued by a landlord in order to make it valid would be contrary to natural justice, unfairly prejudicial to the respondent and would create a perception of bias.

Given the above, I find that the Notice issued by the landlord was not valid under the Act and therefore I am not able to enforce this deficient Notice, regardless of whether rent is owed and unpaid by this tenant.

Conclusion

Based on the evidence I find that the Ten-Day Notice to End Tenancy for Unpaid Rent dated May 29th 2009 was not valid. Accordingly, I hereby dismiss the landlord's application without leave to reapply.

June 2009

Date of Decision

Dispute Resolution Officer