



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DIRECT REQUEST 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, 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 May 21, 2009 the landlord served the tenant in person with the Notice of Direct Request Proceeding. 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 of \$981.03 for unpaid rent 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.

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 was served in person to the tenant at an unspecified time on the morning of May 2, 2009.

The purpose of serving documents under the *Act* is to notify the person being served of a failure to comply with the *Act* and of their rights under the *Act* in response. The landlord, seeking to end the tenancy due to the breach has the burden of proving the tenant was served with the 10 day Notice to End Tenancy.

The landlord has supplied information purporting to be proof of service of the Notice to End Tenancy. Although the Ten-Day Notice was served in front of a witness, I find that the data regarding the manner of service to be insufficient as it does not identify what time the personal service was effected. However, I will accept that the Notice was served, with the caution that in future the landlord must be specific in regards to the service and ensure that the time is accurate. A Direct Request determination is made in the absence of testimony from the respondent and all proceedings are based on the fact that the Notice was received and the tenant had failed to make an application to dispute the Notice.

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 \$800.00 rent plus \$25.00 for parking per month and that a deposit of \$400.00 was paid on February 28, 2008.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 2, 2009 with a vacancy date of May 12, 2009 and \$981.03 in rental arrears

No copy of the resident ledger or account was submitted. The application does not specify the time period to which these arrears pertain.

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.

In regards to the monetary claim, I note that the landlord has supplied inadequate details regarding the payment history. The Application indicated that the tenant was in arrears for \$981.03, but fails to identify what this debt represents. I find that the amount exceeded the monthly rent and some of the debt must relate to earlier months. No details about partial payments or ledger was included.

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 amount of arrears shown as owing on the application is not sufficiently justified and this makes a determination on the monetary compensation under section 67 impossible. Accordingly the landlord's application for a monetary order for rental arrears is dismissed without leave to reapply.

I find that the landlord is entitled to be reimbursed the \$50.00 fee paid by the Landlord for this application. I order that the landlord may retain this amount from the deposit held on behalf of the tenant.

June 2009

Date of Decision

Dispute Resolution Officer