

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 to recover the cost of the filing fee for this application.

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, in person at the rental unit, with the Notice of Direct Request Proceeding.

The landlord received the Direct Request Proceeding package on June 10, 2009 and initiated service on June 10, 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 for the purposes of an application under section 55, for an Order of Possession and section 67 for a Monetary Order.

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; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 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 of the Notice of Direct Proceeding to the tenant
- A copy of a residential tenancy agreement which was signed by the landlords on March 29, 2009 and by the tenant on April 29, 2009, indicating \$250.00 per month rent due on the first of the month, a deposit of \$125.00 was paid on October 1, 2008.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on June 1, 2009 with an effective vacancy date of June 10, 2009 for \$250.00 in unpaid rent

Documentary evidence filed by the landlord indicates that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent in person on June 1, 2009 at 10:00 p.m. 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 pay the rent or apply to dispute the Notice to End Tenancy within five days.

Analysis

Order of Possession – Section 46 of the *Residential Tenancy Act* stipulates 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. In this case the landlord issued a notice on the 1st of June 2009, the date that the rent was due and not on a date after the rent was due. Based on the foregoing, I find that the 10 Day Notice to End Tenancy is invalid and I dismiss the landlord's claim without leave to reapply.

If rent is still not paid, the landlord is at liberty to issue a new 10 Day Notice to End Tenancy and submit a new application and resubmit the evidence for dispute resolution.

As the landlord was not successful with his claim, I hereby dismiss his request to recover the cost of the filing fee for this application.

Conclusion

I HEREBY DISMISS the landlord's application, without leave to reapply.

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: June 17, 2009.

Dispute Resolution Officer