

DECISION

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, a Monetary Order for unpaid rent and 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 June 9, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding, served to the tenant personally at the rental unit.

The landlord received the Direct Request Proceeding package on June 8, 2009 and initiated service on June 9, 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; to keep all or part of the security deposit; 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.

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 parties on October 1, 2006, indicating \$1,250.00 per month rent due on the first of the month, a deposit of \$625.00 was paid on September 30, 2006.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 16, 2009 with an effective vacancy date of May 31, 2009 for \$1,650.00 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 by sending it to the tenant via registered mail on May 16, 2009. 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. I accept that the tenant has been served with notice to end tenancy effective on May 31, 2009, 10 days after service was effected on May 21, 2009.

Analysis

I note that the landlord failed to list a “Day” in the Day, Month, Year section of when the tenant was to vacate the rental unit by and only listed May 2009. Section 53 of the *Residential Tenancy Act* stipulates that incorrect effective dates automatically changed and that if a landlord or tenant gives notice to end a tenancy that does not comply with this Division, the notice is deemed to be changed in accordance with subsection 2 or 3 as applicable. Based on the aforementioned I find that the “move out by” date is deemed to be May 31, 2009, 10 days after service was effected on May 21, 2009.

Order of Possession - 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.

Monetary Order – I find that the landlord has submitted a tenancy agreement which stipulates rent is payable in the amount of \$1,250.00, a 10 Day Notice to End Tenancy for unpaid rent of \$1,650.00 that was due on May 1, 2009, and there is no explanation provided of why these amounts are different. Based on the aforementioned I find that the landlord's monetary claim does not meet the criteria to be reviewed through a direct request process and hereby dismiss the landlord's monetary claim with leave to reapply.

Filing Fee – I find that the landlord has been partially successful in his claim and that the landlord is entitled to recover the filing fee of \$50.00 from the tenant, and that this filing fee meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit. The balance of the tenants' security deposit and interest is to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY 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 HEREBY DISMISS the landlord's Monetary Claim, with 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 18, 2009.

Dispute Resolution Officer