



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 16, 2009, the landlord served the tenant with the Notice of Direct Request Proceeding. The applicant provided a receipt to confirm service by registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served in 5 days when sent by registered mail.

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, 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 but did not provide a "Proof of Service" form confirming that the Ten-Day Notice to End Tenancy, was served in person to the tenant. However, situated under the landlord's signature on the Ten-Day Notice, there is another signature at the bottom corner which cannot be read. However, the tenant's name has been printed beside this signature. The notice was issued on June 5, 2009 and the landlord's application indicated that it was also served on June 5, 2009 *April 1, 2009*. No receipt date was indicated by the individual who signed the bottom corner.

The "Proof of Service Form" normally included in the Direct Request package requires confirmation that the Ten-Day Notice was served, either by registered mail or in the case of personal service or posting the Notice, the form requires the person who served to specifically confirm both the date and the time of service with a witness signature or the tenant's signature beside the data in order to verify in writing that service was completed on the date and time being claimed. In this instance I find that the landlord has obtained what appears to be the tenant's undated signature on the landlord's copy of the Notice.

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, seeking to end the tenancy due to this breach has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy. While I find that the landlord has met this burden, I feel it necessary to encourage the landlord to include the "Proof of Service Form" in future applications to ensure that the service date and time are properly verified to avoid the likelihood of a determination being made that the criteria for a Direct Request has not been met.

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Analysis

Based on the evidence submitted by the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

I find that the landlord is entitled to receive rental arrears for June 2009 and has established a total monetary claim of \$4,750.00 comprised of \$4,700.00 rental arrears for the month of June 2009 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and, estimated interest of \$ 2,100.00 in partial satisfaction of the claim, leaving a balance due of \$2,650.00 owed to the landlord.

Conclusion

I hereby issue an Order of Possession in favour of the landlord 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 grant the Landlord an order under section 67 for \$2,650.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

June 2009

Date of Decision

Dispute Resolution Officer