



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

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 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 June 15, 2009 at 2:45 pm the landlord personally served the tenant with the Notice of Direct Request Proceeding at the rental unit address. The landlord received the Direct Request Proceeding package on June 10, 2009 and initiated service five days later. As determined by section 71(2)(b) and based on the written submissions of the landlord, I find the tenant has been sufficiently 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 unpaid rent and to keep all or part of the security deposit pursuant to sections 38, 55 and 67 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 for the tenant
- A copy of a residential tenancy agreement which was signed by the parties on January 30, 2009 indicating \$795.00 per month rent due on the 1st day of the month,
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 7, 2009 with an effective vacancy date of May 21, 2009 for \$196.25 in unpaid rent and \$397.50 which is the amount of deposit indicated on the tenancy agreement

Documentary evidence filed by the landlord indicates that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by the landlord who posted the Notice to

the door of the rental unit at 1:30 pm on May 7, 2009. The landlord provided a Proof of Service document signed by a landlord employee witness, acknowledging service of the Notice. 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 apply to dispute the Notice to End Tenancy within five days.

The landlord has requested a monetary order for unpaid rent in the sum of \$593.75 for May and \$795.00 for the months of June and July each.

Analysis

I accept that the tenant has been served with Notice to End Tenancy effective on May 10, 2009; three days after posting.

From the evidence before me I have determined that the landlord Notice to End Tenancy for Unpaid Rent issued on May 7, 2009 includes unpaid rent of \$196.25, plus the unpaid deposit. A landlord may issue a Notice to End Tenancy for Cause if the security deposit remains unpaid within 30 days of the date it was required to be paid. More than 30 days have elapsed since the tenant moved in and the landlord has issued a 10 Day Notice to End Tenancy for Unpaid Rent. I find that the tenant has failed to pay rent of \$196.25 for the month of May and has failed to pay rent of \$795.00 for the month of June. Despite the inclusion of the deposit owed on the Notice, I find that the tenant would understand that he owed the landlord rent, which is separately listed on the Notice.

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; May 21, 2009.

I find that the landlord is entitled to a monetary Order for unpaid rent in May of \$196.25 and June in the sum of \$795.00. The landlord's request for loss of July rent is dismissed with leave to reapply as the rent for the month of July is not yet due.

As the tenant did not pay a deposit the landlord request to retain the deposit is dismissed without leave to reapply.

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 landlord is entitled to monetary compensation under section 67 in the amount of **\$991.25** comprised of rent owed. 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.

The landlord request for rental revenue loss for July is dismissed with leave to reapply.

The landlord request for retention of the deposit is dismissed without leave to reapply.

Dated June 26, 2009.

Dispute Resolution Officer