



Dispute Resolution Services
Residential Tenancy Branch
Ministry of Housing and Social Development

DIRECT REQUEST DECISION

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a monetary order for rent and late fees 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 23, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the written submissions of the landlord, I find that the tenant been served with the Dispute Resolution Direct Request Proceeding documents.

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 to End Tenancy, was served by posting the notice on the tenant's door on June 8, 2009 at 2:12 as witnessed by another party.

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 and I find that the landlord has met this burden.

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 late fees; 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 to the tenant of the Notice of Direct Proceeding
- A copy of a residential tenancy agreement which was signed by the parties on February 17, 2009 indicating monthly rent of \$975 plus parking fees of \$45.00 per month rent due on the first day of the month, and that a deposit of \$487.50 .00 was paid on February 28, 2009.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on June 8, 2009 with a vacancy date of June 18, 2009 for \$1,090.00 in rental arrears including a late fee of \$25.00.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay \$975.00 rent owed for the month of June, \$45.00 parking for June 2009, \$45.00 parking for May 2009 and that the tenant also owes \$25.00 for late fees pursuant to terms contained in the tenancy agreement for a total amount of \$1,090.00 owed. The Ten-Day 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 nor apply to dispute the Notice to End Tenancy within five days.

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 late fee of \$25.00, section 55(4)(b) restricts monetary orders determined under this section of the Act to rent and does not permit determination of a claim for any other damages. Therefore the portion of the landlord's application for the late fees is dismissed with leave.

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 \$1,115.00 comprised of \$1,020 rent and parking for June 2009, \$45.00 for parking for May 2009 and the \$50.00 fee paid by the Landlord for this application. I order that the landlord may retain the deposit and interest held of \$487.50 in partial satisfaction of the claim and grant an order for the balance due of \$627.50. 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.

July 2009

Date of Decision

Dispute Resolution Officer