



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 55(4) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and to retain all or part of the Security Deposit.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding, with a copy of the Registered Mail receipt, which declares that on July 16, 2009 the landlord served the male tenant with the Notice of Direct Request Proceeding by Registered Mail to the dispute address. Pursuant to section 90(a) of the Residential Tenancy Act I deem that this particular tenant has been served on the fifth day after the documents were sent.

Preliminary Issue

I find that the landlord has served only one of the tenants with the Notice Of Direct Request. The landlord has requested a monetary claim in this application for the sum of \$100.00 which is further described on the Application for Dispute Resolution to consist of unpaid rent.

Sections 88 and 89 of the Act determine the method of service for documents. The Landlord has applied for a Monetary Order which requires that the landlord serve the tenants as set out under Section 89(1). In addition the Residential Tenancy Rules of Procedure, Rule 3.1, states that the applicant must serve **each respondent** with a copy of the Application for Dispute Resolution, along with copies of all of the following: a) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch; b) the dispute resolution proceeding information package provided by the Residential Tenancy Branch; c) the details of any monetary claim being made, and d) any other evidence accepted by the Residential Tenancy Branch with the application or that is available to be served.

In this case only the one of the two tenants has been personally served with the Notice of Direct Request Proceeding documents. Tenants are jointly and severally responsible for the payment of rent under a tenancy agreement. Therefore, I find that the request for a Monetary Order against both of the tenants must only apply to the tenant who has been properly served with Notice of this Proceeding. As the service of the Notice of Direct Request Proceeding documents upon the other tenant (LM) has not been proven, as required by Section 89(1) of the Act, the Landlord's monetary claim against the (LM), tenant, is dismissed without leave to reapply.

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 an order to retain the Security Deposit and 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)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding, with a copy of the Registered Mail receipt, for one of the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on March 1, 2009 for a fixed term tenancy beginning March 1, 2009 for the monthly rent \$1,000.00 due on 1st of the month and a deposit of \$500.00 was paid February 27, 2009;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on July 3, 2009 with an effective vacancy date of July 13, 2009 due to \$600.00 in unpaid rent .

Documentary evidence filed by the landlord declares that the tenants failed to pay a portion of the rent for July and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when the notice was posted to the door of the dispute address in the presence of a Witness on July 3, 2009 at 9:00 a.m. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with the notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on July 6, 2009 and the effective date of the notice is amended to July 16, 2009 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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.

The landlord testified that the tenant had owed \$600.00 rental arrear, but paid \$500.00 of the outstanding amount and still owes \$100.00. The landlord has requested a monetary claim in this application for the sum of \$100.00 which is further described on the Application for Dispute Resolution to consist of unpaid rent.

Conclusion

The landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

The landlord is entitled to monetary compensation under section 67 in the amount of **\$150.00** comprised of \$100.00 in unpaid rent and the \$50.00 fee paid by the Landlord for this application. I order that the landlord may retain \$150.00 from the deposit and interest held of \$500.00 in satisfaction of the claim leaving the remaining \$400.00 of the security deposit to be dealt with in compliance with section 38 of the Act.

Dated July 2009.

Dispute Resolution Officer