



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 55(4) 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 August 19, 2009, the landlord personally served the tenant with the Notice of Direct Request Proceeding.

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 and a "Proof of Service" form stating that the Ten-Day Notice to End Tenancy, was served by posting it on the door at 9:00 a.m. on August 4, 2009. A posted Notice is deemed to be served in three days and the effective date is therefore amended to be August 17, 2009.

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.

Background and Evidence

Submitted into evidence was a copy of the Ten-Day Notice and proof of service. The landlord also included a copy of a tenancy agreement signed on August 17, 2009, showing rent set at \$800.00 per month and security deposit of \$400.00 and a copy of the tenant's rental application indicating that the tenancy was to begin on June 1, 2009. No copy of the tenant's rent account ledger was submitted. However on the application for Direct Request, the landlord indicated that the tenant was in arrears for \$500.00 for the month of July 2009 and \$200.00 arrears for the month of August 2009 totalling \$700.00.

Preliminary Issue

Based on the evidence, I find that the parties have officially entered into a new tenancy that began on August 17, 2009. I find that, because this reinstated tenancy was created subsequent to the landlord's issuance of the Ten-Day Notice to End Tenancy dated on August 4, 2009, the matter of arrears that stemmed from the previous tenancy no longer exists. Therefore I find that the landlord's application cannot proceed and must be dismissed.

Conclusion

I hereby dismiss the landlord's application in its entirety without leave to reapply.

August 2009

Date of Decision

Dispute Resolution Officer