



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, which declares that on August 18, 2009 the landlord personally served each tenant with the Notice of Direct Request Proceeding by hand at the dispute address.

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

Preliminary Issue

In addition to seeking an Order of Possession for Unpaid Rent, the landlord's application indicated that the landlord was also seeking an Order of possession based on cause and breach of agreement. However, a Direct Request proceeding is only applicable to a Ten-Day Notice to End Tenancy for Unpaid Rent under section 46 of the Act. Ending a tenancy for cause or for breach of agreement, would entail issuing a One-Month Notice to End Tenancy For Cause under section 47 and the landlord would then be required to make an application for a participatory hearing. Therefore this direct request process will proceed only in relation to the Ten-Day Notice for Unpaid Rent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections

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, confirming personal service to each of the tenants;
- A copy of a residential tenancy agreement signed by the landlord and the tenants, on August 28, 2008 for a tenancy beginning September 1, 2008 with monthly rent of \$900.00 due on 1st of the month. A deposit of \$450.00 was required.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on July 21, 2009 with an effective vacancy date of July 31, 2009, with \$5,250.00 in unpaid rent. On this form, the section below the amount, to show the date rent was due, was left blank.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on August 12, 2009 with an effective vacancy date of August 22, 2009 due to \$5,250.00 in unpaid rent. On this form, the section below the amount owed, to be filled in to show the date rent was due, was left blank.
- A copy of the Proof of Service of the Ten-Day Notice indicating that the 10-Day Notice dated August 12, 2009 was personally served on the tenant on August 12, 2009 at 1:30 p.m.
- A copy of a tenant ledger

Analysis

I have reviewed all documentary evidence. Although I accept that the tenant had been served with the Ten-Day Notice to End Tenancy as declared by the landlord, I find that both of the Ten-Day Notices are deficient on their face due to not being completed properly.

Under section 46 of the Act a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. However 46(2) requires that a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*. Section 52 of the Act requires that a Notice to End Tenancy be in the approved form.

I find that a Notice issued under section 46 of the 'Act that does not include date the rent was properly due to be a deficient notice that can not be enforced. Based on the foregoing, I find that this matter can not proceed.

Conclusion

The landlord's application is dismissed without leave.

Dated August 2009

Dispute Resolution Officer