



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR, FF

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (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 September 10, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding via personal delivery at the rental unit address at 6:15 p.m. Section 90 of the Act determines that a document is deemed to have been served on the day it is personally delivered.

Based on the written submissions of the landlord, I find that the tenant has been served with the 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 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 Act.

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 December 8, 2009, indicating a monthly rent of \$912.00 due before 1:00 p.m. on the last day of the month and that a deposit of \$456.00 was paid on December 9, 2008; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 1, 2009 with a stated effective vacancy date of September 11, 2009, for \$1,068.00 in unpaid rent due August 31, 2009.

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Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door on September 1, 2009 at 9:35 p.m. with the relief manager as a witness. The Act deems the tenant was served on September 4, 2009; three days after posting.

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 from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord.

The notice is deemed to have been received by the tenant on September 4, 2009.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. However, I am unable to determine the details of the amount of rent owed indicated on the Notice to End Tenancy. Therefore, in the absence of any detailed breakdown of the monetary Order requested, I find that the monetary compensation claimed by the landlord is dismissed with leave to reapply.

Section 53 of the Act allows an effective date stated in the Notice that is earlier than the earliest date permitted under the Act, to be changed to the earliest date that complies with the section. Therefore, the effective date of the Notice is changed to September 14, 2009.

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; September 14, 2009.

Therefore, I find that the landlord is entitled to an Order of possession and the application fee cost.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The landlord's claim for a monetary Order for unpaid rent is dismissed with leave to reapply.



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I find that the Landlord has established a total monetary claim of \$50.00 comprised of the fee paid for this application and I grant the Landlord an order under section 67 of the Act. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord has not applied to retain the deposit indicated on the tenancy agreement as having been paid. Any deposit paid is held in trust by the landlord and must be disbursed as determined by section 38 of the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 14, 2009.

Dispute Resolution Officer