



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR, MNSD, OPB, FF

Preliminary Matter

This direct request proceeding will consider the portion of the Application related to unpaid rent. The reason indicated by the landlord that the tenant has breached an agreement with the landlord will not be considered through the direct request process.

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, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The landlord's Application for Dispute Resolution indicates that the landlord is terminating the tenancy due to a breach of an agreement with the landlord.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 11, 2009 the landlord personally served the female tenant at the rental unit address at 5:06 p.m. with the Notice of Direct Request Proceeding.

The landlord provided a proof of service document indicating that on September 14, 2009 the male tenant was served via registered mail to a mailing address that is not indicated as the tenant's service address provided on the landlord's Application for Dispute Resolution. The landlord has not provided any evidence confirming that this is the service address for the male tenant; therefore I find that this tenant has not been sufficiently served.

Section 88(1) of the Act determines the method of service for documents. The landlord has applied for a monetary Order which requires that the landlord serve each respondent as set out under section 89(1). In this case only one of the two tenants has been personally served with the Notice of Direct Request Proceeding document for the purposes of a monetary claim; there is no evidence before that indicates the male tenant has changed his address. Therefore, I find that the request for a monetary Order against both tenants must be amended to include only the female tenant who has been properly served with Notice of this Proceeding.

The proceeding against both tenants in relation to an Order of possession will proceed as the male tenant has been served via an adult with whom he apparently resides.

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, to retain the deposit in partial satisfaction of the monetary claim and filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, 38 and 72 of the *Residential Tenancy Act (Act)*. I have reviewed all documentary evidence.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each tenant
- A copy of a residential tenancy agreement which was signed by the parties on November 28, 2008 indicating \$1,100.00 per month rent due on the first day of each month, a deposit of 550.00 was paid on an undetermined date;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 2, 2009 with an effective vacancy date of September 12, 2009 for \$1,100.00 in unpaid rent due on September 1, 2009.

Documentary evidence filed by the landlord indicates that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent by the landlord by posting to the door of the rental unit on September 2, 2009 at 12:12 p.m. with a witness present. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days. I accept that the tenants have been served with notice to end tenancy effective on September 5, 2009; 3 days after posting.

Analysis

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 13, 2009.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice; September 13, 2009.

I have issued a monetary Order against the female tenant who was personally served with the Notice of Direct Request Proceeding as required under section 89(1) of the Act. An Order of possession has been issued against both tenants, who were properly served with the Application for Dispute Resolution and the Notice to End Tenancy as



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required under sections 88 and 89 of the Act for the purposes of an Order of possession.

I note that the tenancy agreement includes an unenforceable \$75.00 administrative fee for NSF cheques and late rent payments. As determined by Residential Tenancy Regulation 7, the maximum allowable fee is \$25.00.

I have calculated that the landlord is holding in trust a deposit plus interest, from February 1, 2007, in the sum of \$565.91.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenants**. This order must be served on the Respondents 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 **\$1,150.00** comprised of \$1,100.00 rent owed for September and the \$50.00 fee paid by the Landlord for this application. The landlord may retain the deposit plus interest in the sum of \$565.91 in partial satisfaction of the monetary claim and I grant an Order for the balance due of **\$584.09**. 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.

The monetary claim against the male tenant has been dismissed without leave to reapply.

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 22, 2009.

Dispute Resolution Officer