



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 Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 18, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the written submissions of the landlord, I find that the tenant has been 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 unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections, 46, 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 for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on April 15, 2008. This was a fixed term tenancy beginning April 18, 2008 which has reverted to a

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month to month tenancy for the monthly rent of \$645.00 due on 1st of the month and a security deposit of \$322.50.00 was paid on April 15, 2008.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 02, 2009 with an effective vacancy date of September 12, 2009 due to \$880.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the rent owed for the month of September, 2009 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the door of the tenant's rental unit on September 02, 2009 at 11.10 a.m.

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. However the tenant did pay \$200.00 on September 11, 2009 towards his rent arrears.

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 05, 2009, and the effective date of the notice is amended to September 15, 2009 pursuant to section 53 of the *Act*. 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*.

The tenancy agreement indicates rent is \$645.00 per month whereas the landlord's application indicates outstanding rent was \$880.00 for September. Where rent has been legally increased since the tenancy commenced it is necessary for the landlord to provide evidence of such rent increases to substantiate rent owing is greater than that indicated in the tenancy agreement. Therefore, I find as the landlord has not submitted any additional evidence to indicate a rent increase since the agreement was entered into the landlord is only entitled to recover the rent owed that is stated on the tenancy agreement of \$645.00 less the \$200.00 the tenant paid on September 11, 2009.



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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.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant 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 pursuant to section 67 in the amount of **\$495.00** comprised of \$445.00 rent owed and the \$50.00 fee paid by the Landlord for this application. I grant an order for the balance due of **\$495.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord is at leave to reapply for a Monetary Order for outstanding rent for the balance indicated on his application if he can provide sufficient evidence to support his claim.

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 28, 2009.

Dispute Resolution Officer