

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the *Residential Tenancy Act* (the Act).

Issue(s) to be Decided

The issues to be decided are whether the Applicant is entitled to an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; to keep the security deposit; and to recover the cost of the filing fee from the Tenant. I have reviewed all documentary evidence submitted by the Applicant.

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the Tenant on November 1, 2008. The tenancy agreement indicates a monthly rent of \$770.00 due on the first of each month. The tenancy is a month-to-month tenancy, commencing November 1, 2008. The tenancy agreement states that a security deposit in the amount of \$385.00 was required. It also states that \$150.00 will be deducted automatically from the security deposit if the tenancy is less than one year.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent of \$443.08, which was issued on September 2, 2009, with an effective vacancy date of September 12, 2009.

- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- A copy of the Landlord's Application for Dispute Resolution, filed September 17, 2009; and
- A copy of the Proof of Service of the Notice of Direct Proceeding.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 18, 2009, at 4:33 p.m., the Landlord's agent served the Tenant with the Notice of Direct Request Proceeding, by registered mail. The Landlord submitted a copy of the registered mail receipt and tracking number.

The Landlord submitted a signed Proof of Service of the Notice to End Tenancy which declares that on September 2, 2009, at 9:00 p.m., the Landlord's agent served the Tenant with the Notice to End Tenancy by posting it on the Tenant's door at the rental unit. The Proof of Service document was signed by a Witness.

Analysis

The Landlord has applied to retain the security deposit. However, for the purposes of calculating accrued interest, there is no documentary evidence provided with respect to when the security deposit was paid. It is important to note that the tenancy agreement contains a clause allowing the Landlord to automatically keep \$150.00 of the security deposit if the tenancy is less than one year. This is a breach of Section 20(e) of the Act, which states that a landlord must not automatically keep all or part of the security deposit at the end of the tenancy agreement. A security deposit is held in trust for the Tenant and must be administered in accordance with the provisions of Section 38 of the Act. It may not be unilaterally withheld by the Landlord. Section 5 of the Act provides that Landlords and Tenants can not avoid or contract out of the Act, and any attempt to do so is of no effect.

The tenancy agreement provided by the Applicant/Landlord discloses a different landlord from the Applicant. There was no evidence provided by the Applicant/Landlord to support that the Applicant/Landlord is in fact the Landlord. Therefore, I dismiss the Applicant/Landlord's application with leave to re-apply.

Conclusion

The Landlord's application is dismissed with 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 28, 2009.
