



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes - OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order due to 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; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on March 1, 2008 for a one year fixed term that converted to a month to month tenancy beginning March 1, 2009 for the monthly rent of \$970.00 due on 1st of the month and a security deposit of \$472.50 was paid on March 1, 2008;
- Copy of a document signed by the tenant March 1, 2008 (start dated of tenancy) authorizing the landlord to deduct \$472.50 from the tenant's security deposit;
- Copy of a Notice of Rent Increase dated March 17, 2009 advising of a rent increase to \$979.96 per month, effective July 1, 2009.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on July 10, 2009 with an effective vacancy date of July 23, 2009 due to \$1029.96 in unpaid rent.
- A copy of a registered letter receipt from Canada Post dated August 28, 2009 address to the respondent tenant.

The landlord's agent testified that the Notice of this Dispute Resolution Hearing was provided via registered mail as confirmed by the receipt submitted into documentary evidence.

Documentary and testimonial evidence provided by the landlord's agent indicates that the tenant had failed to pay the rent owed for the month of July 2009 and that the tenant was



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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 July 10, 2009. There was no corroborating evidence or witness to the posting of the 10 Day Notice.

The landlord's agent testified that the tenant has paid subsequent month's rent but not the increases that came effective July 1, 2009 or rent for the month of June.

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. Nor did the tenant appear at this hearing.

Proof of Service of 10 Day Notice to End Tenancy

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The landlord is seeking to end the tenancy due to this breach; however, the landlord has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy.

Analysis

In the absence of the confirming evidence of proof of service of the Notice to End Tenancy I find that the landlord has failed to establish that the tenant was served with the 10 day Notice to End Tenancy.

While not germane to this hearing I feel it is important to note that the document submitted as part of the documentary evidence from the landlord authorizing the landlord to deduct the full amount from the security deposit signed by the tenant on the start date of the tenancy is unenforceable. Section 20 (e) of the *Act* prohibits a landlord to require, at the start of a tenancy, that the landlord keeps all or part of the security deposit at the end of the tenancy.

Conclusion

Having found that the landlord has failed to prove service of the Notice of Direct Request Proceeding I have determined that this application be 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: October 09, 2009.

Dispute Resolution Officer