



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR, MNSD, 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 landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 14, 2009 the landlords served each tenant with the Notice of Direct Request Proceeding by 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 tenants have been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the landlords are 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 tenants 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 the Proof of Service of the Notice of Direct Request Proceeding for each tenant;
- A copy of a residential tenancy agreement which was signed by the parties on June 16, 2009 for a tenancy beginning July 1, 2009 for the monthly rent of \$915.00 due on 1st of the month and which shows that a security deposit of \$450.00 was paid on June 16, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, October 2, 2009 with an effective vacancy date of October 16, 2009 due to \$2850.00 in unpaid rent.

Documentary evidence filed by the landlord(s) indicates that the tenant(s) had failed to pay the rent owed for the months of August 2009, September 2009, and October 2009 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent which was posted on the door of the tenant's rental unit on October 2, 2009 and therefore is deemed served three days later.

The Notice states that the tenant(s) had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant(s) did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlords. The notice is deemed to have been received by the tenant(s) on October 5, 2009 . I accept the evidence before me that the tenants have failed to pay the rent owed in full with in the 5 days granted under section 46 (4) of the *Act*.

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.

Conclusion

I find that the landlords are entitled to an Order of Possession effective **two days after service on the tenant(s)**. This order must be served on the tenant(s) and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlords are entitled to monetary compensation pursuant section 67 in the amount of \$2795.00 comprised of \$2745.00 rent owed and the \$50.00 fee paid by the Landlord(s) for this application. I order that the landlord(s) may retain the deposit and interest held of \$450.00 in partial satisfaction of the claim and grant an order for the balance due of \$2345.00. This order must be served on the tenant(s) and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlords had requested a monetary order for \$2850.00 however they are only claiming that three months rent is outstanding, and since three months rent adds up to \$2745.00 that is the only amount I have allowed. I'm not clear on what the difference is however the application mentions late fees and NSF charges. Late fees and NSF



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

charges cannot be claimed on a Direct Request Proceeding; I therefore dismiss with leave to reapply the portion of the monetary claim that exceeds \$2745.00.

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 27, 2009.

Dispute Resolution Officer