



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 *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 submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 17, 2009 the landlord personally served the tenant with the Notice of Direct Request Proceeding at the rental unit at 11:10 am. Section 90 of the Act determines that a document is deemed to have been served on the day it is personally delivered.

Based on the written submissions of the landlord, I find that the tenant has been served with the 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; 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, 55, 67, and 72 of the 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 29, 2009, indicating a monthly rent of \$800.00 due on the first day of the month and that a deposit of \$400.00 was payable; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 2, 2009 with a stated effective vacancy date of November 12, 2009, for \$825.00 in unpaid rent due on November 1, 2009.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery on November 2, 2009 at 4:45 pm with a witness present. The Act deems the tenant was served on November 2, 2009.

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 from the date of service.

The landlord's Application for Dispute Resolution indicates that the tenant has paid only \$375.00 of the \$400.00 deposit that was indicated as owed on the tenancy agreement. The landlord is claiming unpaid rent in the sum of 800.00 for November and a late fee of \$25.00.

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 November 2, 2009.

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*.

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; November 12, 2009.

The landlord has included late fees as part of the unpaid rent indicated on the Notice to End Tenancy. Late fees are not rent and should not be included as such on the Notice to End Tenancy. Further, only unpaid rent is considered via the Direct Request process; therefore, the claim for late fees is dismissed with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order for unpaid rent, and the application fee cost.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and the Order 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 section 67 in the amount of **\$850.00** comprised of \$800.00 rent owed and the \$50.00 fee paid for this application.

I order that the landlord may retain the deposit and interest held of \$375.00 in partial satisfaction of the claim and grant an Order for the balance due of **\$475.00**. 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.

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: November 25, 2009.

Dispute Resolution Officer