



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 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 October 22, 2009 the landlord served the tenant with Notice of this Proceeding by registered mail. The landlord provided a Canada Post receipt, tracking number as evidence of service to the rental unit address. Section 90 of the Act determines that a document is deemed to have been served on the fifth day after mailing

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 August 15, 2009, indicating a monthly rent of \$970.00 due on the first day of the month and that a deposit of \$485.00 was paid on August 15, 2009; and

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- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 7, 2009 with a stated effective vacancy date of October 17, 2009, for \$995.00 in unpaid rent.

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 registered mail on October 7, 2009 at 1:30 pm with a witness present. The Act deems the tenant was served on October 10, 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 evidence indicates that some rent has been paid and that \$395.00 remains outstanding for October rent owed. The landlord is claiming a \$25.00 late payment fee.

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 October 10, 2009.

Section 53 of the Act allows an effective date stated in the Notice that is earlier than the earliest date permitted under the Act, to be changed to the earliest date that complies with the section. Therefore, the effective date of the Notice is changed to October 20, 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.

I dismiss with leave to reapply the claim for late fee compensation as only unpaid rent may be considered via the Direct Request process. I note that the landlord has included fees as unpaid rent on the Notice to End Tenancy.

Therefore, I find that the landlord is entitled to an Order of possession and retention of a portion of the deposit to satisfy the claim for unpaid rent and the filing fee costs.



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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 **\$420.00** comprised of \$370.00 rent owed and the \$50.00 fee paid for this application.

I order that the landlord may retain \$420.00 from the deposit and interest held of \$485.00 in satisfaction of the claim and that the balance of the deposit continued to be retained and disbursed as required by section 38 of the Act. .

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 03, 2009.

Dispute Resolution Officer