



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 the Notice of Direct Request Proceeding via 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 September 1, 2009, indicating a monthly rent of \$990.00 due on the first day of the month and that a deposit of \$495.00 was paid on September 1, 2009;

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- A copy of an Occupant Ledger; and
- 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 \$990.00 in unpaid rent and \$25.00 late fees.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay October rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door on October 7, 2009 at 1:15 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.

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 note that the landlord has included a fee as unpaid rent owed on the Notice to End Tenancy. Fees are not considered as rent and may not be claimed via a Direct Request Proceeding; therefore the claim for 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.



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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 **\$1,040.00** comprised of \$990.00 October rent owed and the \$50.00 fee paid for this application.

I order that the landlord may retain the deposit and interest held of \$495.00 in partial satisfaction of the claim and grant an Order for the balance due of **\$545.00**. 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.

The landlord's claim for fees 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: November 03, 2009.

Dispute Resolution Officer