



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 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 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. 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 Tenant been served with the Dispute Resolution Direct Request Proceeding documents.

In support of his Direct Request Application, the Landlord is also required to provide a copy of the tenancy agreement or any Notice(s) of Rent Increase to substantiate the amount of rent that is required to be paid by the Tenant. In this case, the Landlord claimed that the Tenant verbally agreed to pay an additional amount of rent for another occupant but then later deducted the increased amount from his rent owing for October 2009 as he alleged it was an overpayment due to an illegal rent increase.

Section 46(3) of the Act says that a 10 Day Notice to End Tenancy for Unpaid Rent has no effect if the amount of rent that is unpaid is an amount that the Tenant is permitted under the Act to deduct. Section 43(5) of the Act says that if a landlord collects a rent increase that does not comply with the Act, the tenant may deduct the increase from rent. The Landlord has provided no evidence of a rent increase that complies with the Act in support of his Direct Request Application.

Conclusion

I order that this direct request proceeding be reconvened as a conference call hearing in accordance with section 74 of the Act to determine if the 10 Day Notice to End Tenancy is an enforceable Notice. Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the Tenant within **three (3) days** of receiving this decision in accordance with section 88 of the Act.



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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