



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 November 18, 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 has been served with the Dispute Resolution 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 retain 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 Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on May 2, 2009 for a month to month tenancy beginning on May 2, 2009 for the monthly rent of \$750.00 due on the 1st of the month and a security deposit of \$375.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 5, 2009 with an effective vacancy date of November 15, 2009 due to \$750.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the full rent owed for the month of November, 2009 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the door of the tenant's rental unit on November 5, 2009 at 6:34 p.m. The landlord provided documentation confirming that the service was witnessed by a third party.

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.

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 8, 2009.

The Notice to End Tenancy for Unpaid Rent, however, stated that rent was due on October 31, 2009. The tenancy agreement states that rent is due on the 1st of the month. This incongruence renders the Notice to End Tenancy dated November 5, 2009 to be ineffective.

Conclusion

Based on the above I dismiss the landlord's application for an Order of Possession and a monetary order, without 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: December 01, 2009.

Dispute Resolution Officer