

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing proceeded 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, a Monetary Order, an Order to retain the security deposit in partial satisfaction of the claim, and to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 4, 2009 at 2:00 p.m. the Landlord served the male Tenant with the Notice of Direct Request Proceeding in person. Based on the written submissions of the Landlord, I find that the male 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 keep 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 male Tenant;

- A copy of a residential tenancy agreement which was signed by all parties on February 4, 2009 for a month to month tenancy beginning June 1, 2008 for the monthly rent of \$750.00 due on 1st of the month and a deposit of \$325.00 was paid on or before June 1, 2008; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent of \$509.43 for site cleaning due September 1, 2009 and \$450.00 of utilities due October 14, 2009, which was issued on, November 24, 2009 with an effective vacancy date of December 6, 2009.

Documentary evidence filed by the Landlord indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities when it was served personally to the Tenants on November 24, 2009 at 5:00 p.m. in the presence of a witness.

Analysis

The Landlord has provided a Proof of Service of the 10 Day Notice form which indicates that the Tenant was served the 10 Day Notice to End Tenancy in person on November 24, 2009 at 5:00 p.m. in the presence of a witness, however the 10 Day Notice to End Tenancy listing unpaid rent as “site cleaning bill \$509.45” and unpaid utilities of \$450.00.

Unpaid Rent – The issuance of a 10 Day Notice to End Tenancy is provided for under section 46 of the Act for “unpaid rent”. An unpaid site cleaning bill does meet the definition of unpaid rent.

Unpaid Utilities - The 10 Day Notice to End Tenancy was issued listing “You have failed to pay utilities in the amount of \$450.00.” Section 46 of the *Residential Tenancy Act* states that if utility charges are unpaid more than 30 days **after the tenant is given**

a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section by issuing a 10 Day Notice to End Tenancy. I note that the Landlord did not provide evidence to prove that a written demand was issued to the Tenants for the unpaid utilities and there is no evidence in support of what the utility charges represent. Based on the aforementioned I hereby dismiss the Landlord's claim for unpaid utilities of \$450.00, without leave to reapply.

Based on the above I find that the 10 Day Notice to End Tenancy issued on November 24, 2009 to be void and is without force or effect.

Conclusion

I HEREBY ORDER that the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated July 7, 2009 is without force or effect.

I HEREBY DISMISS the Landlord's application, 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 17, 2009.

Dispute Resolution Officer