

DECISION

Dispute Codes OPR MNR 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, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 3, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post Receipt numbers were submitted in the Landlord's documentary evidence. The Tenant is deemed to be served the hearing documents on December 8, 2009, the fifth day after they were mailed pursuant to section 90 of the *Residential Tenancy Act*. 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; and to recover the filing fee from the Tenant 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 Landlord's Agent and the Tenant, on May 4, 2009 for a fixed term tenancy beginning May 1, 2009 and set to expire on September 30, 2009, for the monthly rent of \$2,600.00 due on 1st of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 18, 2009 with an effective vacancy date of December 4, 2009 due to \$18,150.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by registered mail on November 18, 2009. Registered mail receipt numbers were provided in the Landlord's evidence.

Analysis

The Landlord submitted a copy of the 10 Day Notice to End Tenancy which states that rent was due in the amount of \$18,150 on August 1, 2009 and the application for Dispute Resolution, which was filed on December 1, 2009, notes that the unpaid rent of \$18,150 is comprised of rent for "August, September, October, November, December, and January". I note that the tenancy agreement stipulates that rent is payable on the first of each month, that this tenancy agreement does not expire until September 30, 2009, and that a demand for unpaid rent cannot be issued in advance of when rent is due. The Landlord's application and the 10 Day Notice to End Tenancy contradicts the terms of the tenancy agreement by requesting rent in advance of when it is due.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The landlord is seeking to end the tenancy due to this breach; however, the landlord has the burden of proving that the tenant was served with a valid 10 day Notice to End Tenancy.

In the presence of contradictory evidence relating to the issuance of the 10 Day Notice to End Tenancy and the demand for rent that is not yet past due, I find that the Landlord has failed to establish service of a valid 10 Day Notice to End Tenancy.

Based on the above I find that this application does not meet the requirements for the Direct Request process and I hereby dismiss the Landlord's application without leave to reapply.

Conclusion

The 10 Day Notice to End Tenancy issued on November 18, 2009 is hereby cancelled and of no 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