

INTERIM 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 for unpaid rent, a Monetary Order for unpaid rent, 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 11, 2009 at 5:28 p.m. the Landlord served each Tenant with the Notice of Direct Request Proceeding in person at the rental unit, in the presence of a witness. 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 cost of the filing fee, 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 each Tenant;
- A copy of a residential tenancy agreement which was signed by the Tenants and the Landlord on June 10, 2009 for a month to month tenancy effective June 1, 2009, for the monthly rent of \$1,100.00 due on the 1st of the month. A security deposit of \$550.00 and a pet deposit of \$550.00 were paid on or before June 1, 2009.
- A copy of a 2 Month Notice to End Tenancy for Landlords Use issued on November 29, 2009 with an effective date noted as January 29, 2010.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 4, 2009, with an effective vacancy date of December 14, 2009 due to \$1,100.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the female Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent in person by the Landlord on December 4, 2009 at 8:00 p.m. in the presence of a witness. I note that the Landlord did not list the female Tenant's name on the Proof of Service of the 10 Day Notice however he wrote a note on the proof of service form stating that he left it with "her" and he also noted on his application for dispute resolution that he served the 10 Day Notice to the female Tenant and listed her name specifically.

Analysis

The Landlord has filed through the Direct Request Proceeding and is claiming for an Order of Possession and a Monetary Order for unpaid rent and included copies of a 10 Day Notice to End Tenancy for unpaid rent as well as a 2 Month Notice to End Tenancy for Landlord's Use.

I note that there is no evidence provided to support how or when this 2 Month Notice was served on the Tenants. I also note that the Tenants are entitled to compensation equal to one month of free rent and if the Tenants are vacating the rental unit at the end of December 2009 they can elect to take their compensation and are not required to pay rent for December 2009.

With the presence of the 2 Month Notice to End Tenancy for Landlord's use I find that the Landlord's application does not meet the requirements to be reviewed through a Direct Request Proceeding and a conference call hearing is required in order to make a determination.

Conclusion

I find that a conference call hearing is required in order to determine the merits of this Application for Dispute Resolution. Notices of Reconvened Hearing are enclosed with this decision for the Landlord. A copy of the Notice of Reconvened Hearing, this Interim Decision, the Application for Dispute Resolution, and any evidence that will be introduced at the hearing by the Landlord must be served upon Tenant, in accordance with section 88 of the *Act*, within **three (3) days** of receiving this decision.

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 23, 2009.

Dispute Resolution Officer