



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 December 11, 2009 the landlord served the tenants with the Notice of Direct Request Proceeding in person.

Based on the written submissions of the landlord, I find that the tenants have 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 tenants;
- A copy of a residential tenancy agreement which was signed by the parties on August 1, 2007 for a month to month tenancy beginning August 1, 2007 for the monthly rent of \$600.00 due on the 1st of the month and a security deposit of \$300.00 paid on August 1, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 5, 2009 with an effective vacancy date of December 15, 2009 due to \$1500.00 in unpaid rent and late fees.

Documentary evidence filed by the landlord indicates that the tenants had failed to pay the rent owed for the months of November and December 2009 and for late fees for the

months between October 2007 and December 2009 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally on December 5, 2009 at 10:10 a.m. The landlord has provided written confirmation that this service was witnessed by a third party.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on December 5, 2009, and the effective date of the notice is December 15, 2009. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

The landlord has included a claim for late charges. Section 55(4) of the *Act* allows for the Direct Request process to be conducted only as it relates to issuing an order of possession and monetary orders requiring payment of rent only. The *Act* does not allow, through this process, for recovery of late charges. I dismiss this portion of the landlord's application.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$1,250.00** comprised of \$1,200.00 rent owed and the \$50.00 fee paid by the Landlord for this application. I order that the landlord may retain the deposit and interest held of \$306.42 in partial satisfaction of the claim and grant an order for the balance due of **\$943.58**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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