



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 13, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding in person.

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 keep all or part of the security deposit; 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 parties on October 25, 2009 for a month to month tenancy for the monthly rent of \$800.00. The tenancy agreement does not stipulate neither the date the tenancy began nor the date that rent is due. A security deposit of \$400.00 paid on November 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 \$800.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the rent owed for the month of December 2009 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served to the tenant personally on December 5, 2009 at 11:50 a.m. The landlord has confirmed in writing that this 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 December 5, 2009, and the effective date of the notice is December 15, 2009.

As the tenancy agreement does not stipulate a date that rent is due, I find that a notice issued that states that rent was due on December 1, 2009 is ineffective.

Conclusion

As a result of the above noted findings, I dismiss the landlord's application in its entirety, 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 24, 2009.

Dispute Resolution Officer