



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 *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 19, 2009 the landlord personally served the tenant with the Notice of Direct Request Proceeding at the rental unit at 11:10 am with a witness present. Section 90 of the Act determines that a document is deemed to have been served on the day it is personally delivered.

Based on the written submissions of the landlord, I find that the tenant has been served with the 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, 55, 67, and 72 of the 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 December 8, 2009, indicating a monthly rent of \$835.00 due on or before the first

day of the month and that a deposit of \$417.60 was paid on December 8, 2008; and,

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 3, 2009 with a stated effective vacancy date of November 13, 2009, for \$860.00 in unpaid rent due on November 1, 2009.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting to the door of the rental unit on November 3, 2009 at 10:42 am with a witness present. The Act deems the tenant was served on November 6, 2009.

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 from the date of service.

The landlord has requested compensation for unpaid rent for November in the sum of \$835.00, plus late fees of \$25.00.

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 November 6, 2009.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the Act.

Section 53(2) of the Act provides:

If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Therefore, the effective date of the Notice is changed to November 16, 2009.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice; November 16, 2009.

I note that the landlord has included late fees with the rent owed, on the Notice to End Tenancy. A Notice to End Tenancy should reflect only unpaid rent and utilities; fees are not considered as rent or utility costs. Compensation for fees are not considered via the Direct Request Proceeding process; therefore I dismiss with leave to reapply the claim for fees.

Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order for unpaid rent, and the application fee cost.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and the Order 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 **\$885.00** comprised of \$835.00 November rent owed and the \$50.00 fee paid for this application.

I order that the landlord may retain the deposit and interest held of \$418.01 in partial satisfaction of the claim and grant an Order for the balance due of **\$466.99**. 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.

The claim for fees is dismissed with 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 03, 2009.

Dispute Resolution Officer