



Dispute Resolution Services

Page: 1

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, an order to retain the security deposit in partial satisfaction of the claim and filing fee costs.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 23, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a Canada Post receipt and tracking number as evidence of service. Section 90 of the Act determines that a document is deemed to have been served on the fifth day after mailing.

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

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

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 March 28, 2008, indicating a monthly rent of \$1005.00 due on the 31st day of the month and that a deposit of \$502.50 was paid on March 28, 2008;
- A copy of a Notice of Rent Increase issued on February 17, 2009 for a \$35.00 increase effective June 1, 2009;
- A letter indicating the agent acts for the landlord; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 7, 2009 with a stated effective vacancy date of December 17, 2009, for \$2,080.00 in unpaid rent due on December 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 tenant's door on December 7, 2009, at 10:00 a.m. with a witness present. The Act deems the tenant was served on December 10, 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 evidence indicates that the tenant has not paid rent for November and December, 2009.

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 10, 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 December 20, 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; December 20, 2009.

Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order in the sum of \$2,080.00 for unpaid November and December, 2009, rent, and the application fee cost. The landlord will retain the deposit plus interest in partial satisfaction of the claim for compensation.

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 **\$2,130.00** comprised of \$2,080.00 rent owed and the \$50.00 fee paid for this application.

I order that the landlord may retain the deposit and interest held of \$508.25 in partial satisfaction of the claim and grant an Order for the balance due of **\$1,621.75**. 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: January 12, 2010.

Dispute Resolution Officer