



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 and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 12, 2009 the landlord personally served the tenant with the Notice of Direct Request Proceeding at the rental unit address at 11:40 a.m. Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

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?

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 October 30, 2009, indicating a monthly rent of \$1,000.00 due on the first day of the month and that a deposit of \$500.00 was paid on November 15, 2009; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 3, 2010 with a stated effective vacancy date of January 13, 2010, for \$1,000.00 in unpaid rent due on January 1, 2010.

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 personal delivery on January 3, 2010 at 6:30 p.m. with a witness present. The Act deems the tenant was served on the day of personal delivery.

The landlord's application indicates that the tenant has not paid the full amount of January rent owed. The application also indicates \$550.00 of the January rent was paid ...this left \$450.00 outstanding." Therefore, I find that the landlord is entitled to a monetary Order for the balance of January 2010 rent owed.

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.

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 January 3, 2010.

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; however, I am unable to discern exactly how much rent is owed by the tenant.

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.

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 **\$500.00** comprised of \$450.00 rent owed and the \$50.00 fee paid for this application. I and grant an Order for the balance due of **\$500.00**. 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 landlord has not applied to retain the security deposit paid by the tenant. Any deposit held in trust by the landlord must be disbursed as required by section 38 of the Act. Section 38(3) of the Act allows a landlord to retain from a deposit any amount that has been Ordered to be paid and that at the end of the tenancy remains unpaid.

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 19, 2010.

Dispute Resolution Officer