



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 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 January 12, 2010 the landlord personally served the tenant with the Notice of Direct Request Proceeding at the rental unit at 11:40 a.m. The landlord provided a proof of service document signed by the tenant, acknowledging receipt of the Notice. 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?

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 October 7, 2008, indicating a monthly rent of \$1,450.00 due the first day of the month and that a deposit of \$700.00 was paid on October 16, 2007;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 4, 2010 with a stated effective vacancy date of January 15, 2010, for \$7,365.00 in unpaid rent due on January 1, 2010;
- A copy of a NSF cheque issued by the tenant to the landlord on December 21, 2009 in the sum of \$5,915.00;
- A copy of a tenant ledger indicating the tenant last had a zero balance owing on April 1, 2009; and
- Copies of emails between the landlord and tenant.

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 4, 2010 by the landlord at 4:30 p.m. The landlord provided a copy of a proof of service document signed by the tenant, acknowledging receipt of the Notice. The Act deems the tenant was served on the day of personal delivery.

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 effective September 1, 2009 the tenant owed \$40.00 rent and fee arrears and that from September 1, 2009 to January 1, 2010 the tenant has not paid rent. The landlord application indicates that the tenant owes \$7,365.00 in unpaid rent to January 11, 2010.

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 4, 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.

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; January 15, 2010.

I find that the landlord is entitled to compensation for unpaid rent from September 2009 to January 2010, inclusive, in the sum of \$7,250.00. It appears that the landlord included fees as unpaid rent on the Notice to End Tenancy. The landlord has not clearly indicated what constitutes the balance claimed of \$115.00; therefore that portion of the landlord's claim is dismissed without leave to reapply.

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 **\$7,300.00** comprised of \$7,250.00 rent owed from September 2009 to January 2010 inclusive and the \$50.00 fee paid for this application.

I order that the landlord may retain the deposit and interest held of \$712.75 in partial satisfaction of the claim and grant an Order for the balance due of **\$6,587.25**. 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 19, 2010.

Dispute Resolution Officer