



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 at the rental unit, on January 18, 2010, the landlord served the tenant with the Notice of Direct Request Proceeding via personal delivery at 4:55 p.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?

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 November 5, 2008, indicating a monthly rent of \$1,500.00 due on the first day of the month and that a deposit of \$750.00 was paid on October 10, 2008;
- A copy of a December 16, 2009 letter to the tenant in relation to December rent arrears; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 2, 2010, with a stated effective vacancy date of January 12, 2010, for \$2,400.00 in unpaid rent.

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 at 10:15 p.m. by personal delivery on January 2, 2010, with a friend of the landlord present as a witness. The Act deems the tenant was served on January 2, 2010.

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 2, 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, the amount of unpaid rent claimed by the landlord is not the equivalent to two full months's rent. I am unable to determine the details of the rent arrears claimed as the landlord has not submitted evidence of a payment likely made after December 16, 2009, which appears to have reduced the amount owed for December 2009, and January 2010, by \$900.00. Therefore, I find that the monetary claim is dismissed with leave to reapply.

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 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 order that the landlord may retain the filing fee from the deposit and interest held of \$752.55 and that balance of deposit be disbursed as provided by section 38 of the Act.

The monetary claim 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: January 25, 2010.

Dispute Resolution Officer