



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 January 19, 2010 at 11:47 a.m. the landlord served each tenant with the Notice of Direct Request Proceeding via personal delivery at the rental unit. 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 tenants have 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 each tenant;

- A copy of a residential tenancy agreement which was signed by the parties on November 26, 2007, indicating a monthly rent of \$875.00 due on the first day of the month and that a security/pet deposit of \$875.00 was paid on November 26, 2007;
- A copy of hand-written financial accounting of rent paid, indicating that a security deposit in the sum of \$437.50 was paid on November 26, 2007;
- A copy of a receipt for use and occupancy only issued for rent paid on January 9, 2010;
- A copy of a Notice of Rent Increase issued on March 9, 2009, as the first rent increase effective July 1, 2009 in the sum of \$905.00; 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 \$1,200.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery on January 3, 2010 to the female tenant at 11:20 a.m., at the rental unit. The landlord provided a Proof of Service document signed by the female tenant, acknowledging receipt of the Notice. The Act deems the tenants were served on January 3, 2010.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days from the date of service.

The evidence submitted indicates that the tenants failed to pay \$295.00 owed in December 2009 and that on January 9, 2010 the tenants paid \$925.00, leaving a balance owed of \$275.00. The landlord's Application requests a monetary Order in the sum of \$1,200.00.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord.

The notice is deemed to have been received by the tenants on January 3, 2010.

I accept the evidence before me that the tenants have 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 tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to compensation for the balance of unpaid rent to January 2010 in the sum of \$275.00.

The tenancy agreement submitted as evidence indicates that on November 26, 2007 the tenant paid deposits in the sum of \$875.00.

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 tenants 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 **\$325.00** comprised of the balance of January 2010 rent owed and the \$50.00 fee paid for this application.

I order that the landlord may retain \$325.00 from the deposits and interest held of \$889.43 in satisfaction of the claim. The landlord will retain the balance of the pet and security deposits in the sum of \$564.43 to be disbursed as required by section 38 of the Act.

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 26, 2010.

Dispute Resolution Officer