

DECISION

Dispute Codes OPR MNR MNSD FF

Preliminary Issues

The Landlord has filed a claim against both Tenants named on the header of the tenancy agreement provided in evidence. I note that the second Tenant was added to the original agreement on September 18, 2009 however this second Tenant did not sign the amended agreement. Therefore, I find that the direct request application against both Tenants must be amended to include only the original Tenant who has signed the tenancy agreement.

As the second Tenant has not properly signed the tenancy agreement I find that the Landlord's Application for Dispute Resolution does not meet the requirements to be review through the direct request process and the claim against the second Tenant is dismissed without leave to reapply.

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of 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, and to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 18, 2009 the Landlord served each Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipt numbers were provided in the Landlord's documentary evidence. The Tenants are deemed to have been served the Direct Request Proceeding documents on December 23, 2009, the fifth day after they were mailed pursuant section 90 of the *Residential Tenancy Act*. Based on the written submissions of the Landlord, I find that

the Tenants have been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a Monetary Order for unpaid rent; to keep all or part of the security deposit and to recover the cost of the filing fee, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

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 Tenant and the Landlord on June 2, 2009 with the second Tenant being added to the agreement on September 18, 2009 for a fixed term tenancy beginning June 1, 2009 and switching to a month to month tenancy after May 31, 2010 for the monthly rent of \$1,050.00 due on 1st of the month. The Tenancy agreement lists an additional gas surcharge of \$10.00 per month and a security deposit of \$525.00 was paid on or before June 1, 2009.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, December 7, 2009 with an effective vacancy date of December 19, 2009 due to \$610.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the Tenants' door on December 7, 2009 at 2:30 p.m. in the presence of a witness.

Analysis

Order of Possession - 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, three days after it was posted to the door, and the effective date of the notice is December 20, 2009 pursuant to section 90 of the *Act*. 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.

Monetary Claim –The Landlord has provided details that state that as of December 1, 2009 the Tenants owed \$890.00 from a previous month plus \$1,120.00 outstanding for December 2009 rent less a payment of \$1,400.00 made by the Tenants leaving a balance due of \$610.00.

The documentary evidence supplied by the Landlord supports that the Tenants' monthly rent is \$1,050.00 and not \$1,120.00 as claimed by the Landlord. I also note that the Landlord is charging the Tenants a \$10.00 fee for gas, a charge that I find to be unconscionable when the cost of heat is included in the rent as provided for in the tenancy agreement.

Based on the aforementioned contradictory information, I find that the Landlord's monetary claim does not meet the criteria to be reviewed through a direct request process and hereby dismiss the Landlord's monetary claim with leave to reapply.

Filing fee - \$50.00. I find that the Landlord has succeeded in large and that they should recover the filing fee from the Tenant.

Monetary Order – I find that the Landlord is entitled to recover the filing fee from the Tenant and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest.

Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	\$50.00
Less Security Deposit of \$525.00 plus interest of \$0.00 (June 1, 2009 to January 6, 2010)	-525.00
Balance of Security Deposit and Interest	\$475.00

The balance of the Tenants' security deposit is to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY DISMISS the Landlord's monetary claim, 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*.

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Dated: January 06, 2010.

Dispute Resolution Officer