



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 hearing was convened pursuant to Section 74 of the Act to resolve questions raised during Direct Request Proceeding, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order due to unpaid rent.

The Dispute Resolution Officer reviewing the Direct Request application could not establish if a written tenancy agreement had been entered into; why only one tenant was served with the notice; and to determine the day of the month rent was due.

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; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, 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 complete copy of a residential tenancy agreement which was signed by the parties on June 16, 2009 for a 1 year fixed term tenancy beginning on July 1, 2009 for the monthly rent of \$800.00 due each month and a security deposit of \$400.00 was paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 2, 2009 with an effective vacancy date of November 15, 2009 due to \$800.00 unpaid rent;
- A notice from the tenant dated November 16, 2009 stating the tenant would move from the rental unit on November 16, 2009; and
- A handwritten acknowledgment of receipt of the Notice of Reconvened Hearing signed by the tenant and the building manager.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the full rent owed for the month of November, 2009 and that the tenant were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served by posting it on the tenant's door on November 2, 2009 at 8:00 p.m. The landlord provided written confirmation this service was witnessed by a third party.

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.

The landlord testified that rent was due on the 1st of the month and that the 2nd tenant had vacated the rental unit in early September, 2009. The landlord testified the tenant paid the rent for November in full by November 17, 2009.

The landlord testified the tenant did not pay rent for December 2009 and that the tenant's notice to end the tenancy at the end of November was not sufficient as it was less than one month's notice. The landlord testified the tenant moved from the dispute address on or before the end of November, 2009.

Analysis

Section 46(1) of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due. The tenant has paid the rent in full for the month of November, 2009, rendering the notice to have no effect, as per Section 46(5).

Section 45 of the *Act* requires a tenant wanting to end a tenancy to provide notice that is effective not earlier than one month after the date the landlord receives the notice. As the tenant gave notice that he was moving out on November 16, 2009, the earliest effective date is amended to December 31, 2009, pursuant to Section 53 of the *Act*.

Conclusion

As the tenant is no longer occupying the rental unit, I dismiss the landlord's application for an Order of Possession.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$850.00** comprised of \$800.00 rent owed and the \$50.00 fee paid by the Landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$400.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$450.00**. 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.

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 15, 2010.

Dispute Resolution Officer