

DECISION

Dispute Codes OPR MNR MNSD FF

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 in partial satisfaction of the claim, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 13, 2010 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post Receipt numbers were submitted in the Landlord's documentary evidence. The Tenant is deemed to be served the hearing documents on January 18, 2010, the fifth day after they were mailed pursuant to section 90 of the *Residential Tenancy Act*. Based on the written submissions of the Landlord, I find that the Tenant has 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 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 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 all parties on November 20, 2007 for a fixed term tenancy beginning December 1, 2007 and switching over to a month to month tenancy after July 31, 2011 for the monthly rent of \$2,300.00 due on 1st of the month and a deposit of \$1,150.00 was paid on or before November 18, 2006; and
- A copy of a letter issued by the Landlord to the Tenant on December 2, 2009, advising the Tenant that he could continue his tenancy if his rent was paid.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, December 28, 2009 with an effective vacancy date of January 12, 2010, due to \$2,300.00 in unpaid rent which was due on November 1, 2009.

Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was mailed to the Tenant via registered mail on December 29, 2009. Canada Post receipts numbers were submitted in the Landlord's evidence.

Analysis

The Landlord has filed through the Direct Request Proceeding on January 13, 2010, stating that the Tenant has failed to pay November 2009 rent. I note that there is no mention of December 2009 or January 2010 rent and no tenant ledger to clarify if or when rent was paid. There is not enough evidence to confirm if rent was accepted after the issuance of the 10 Day Notice to End Tenancy.

As per the aforementioned, I find that this application does not fit the criteria of a direct request proceeding. Based on the foregoing, I find that a conference call hearing is required in order to determine the merits of the Landlord's claim.

Conclusion

I find that a conference call hearing is required in order to determine the merits of this Application for Dispute Resolution. Notices of Reconvened Hearing are enclosed with this decision for the Landlord. A copy of the Notice of Reconvened Hearing, this Interim Decision, the Application for Dispute Resolution, and any evidence that will be introduced at the hearing by the Landlord must be served upon Tenant, in accordance with section 88 of the *Act*, within **three (3) days** of receiving this decision.

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 21, 2010.

Dispute Resolution Officer