

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 Act, 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 landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 19, 2010 at 2:03 pm the landlord served the tenant with the Notice of Direct Request Proceeding both via registered mail and in person.

The proof of service included a half completed registered mail customer receipt. The mailing address is not included on the customer receipt. I cannot determine if the landlord sent the letter to the service address or if he delivered it himself to the tenant.

Based on the written submissions of the landlord, I cannot determine if 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; 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 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 sometime in October, 2009 for a month to month tenancy beginning sometime in October, 2009 for the monthly rent of \$795.00 due on the 1st business day of each month and a security deposit of \$395.00 was paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 4, 2010 with an effective vacancy date of January 14, 2010 due to \$1,574.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the full rent owed for the month of December, 2009/2010 and that the tenants 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 January 4, 2010 at 10:00 a.m. The landlord has provided written confirmation that this service was witnessed by a third party

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.

Analysis

As well, the tenancy agreement does not indicate a specific date when it was signed nor when the tenancy began. The tenancy agreement also states that rent is due on the first business day of each month.

The 10 Day Notice to End Tenancy was dated January 4, 2010 and indicates that the rent was due on December 1, 2009/2010. As this date is not possible, it is unclear when the rent was due.

In additional notations provided the landlord indicates that outstanding amount is for December 2009 and January 2010 and yet the notice indicates that rent was due on December 1 of 2009/2010. January rent could not be due on either December 1, 2009 or December 1, 2010.

As a result of these issues in the 10 Day Notice to End Tenancy for Unpaid Rent, I find the Notice to be invalid and have no effect.

Conclusion

Having found the 10 Day Notice to End Tenancy for Unpaid Rent to be ineffective, I dismiss the landlord's application in its entirety, without 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 26, 2010.

Dispute Resolution Officer