



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 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 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Act states a document sent by mail is deemed served on the 5th day after it is mailed.

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; 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 February 28, 2008 for a 1 year fixed term tenancy beginning on March 1, 2009 for the monthly rent of \$2,500.00 due on the 1st of the month for the first 6 months and then on the 1st of the previous month for the remainder of the fixed term and a security deposit of \$5,000.00 was paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 9, 2009 with an effective vacancy date of January 19, 2009 due to \$2,500.00 unpaid rent;
- A copy of cheques from the tenant for the rent for February and January 2010; and
- Several emails between the landlord and tenant regarding the landlord's ability to deposit the rent cheques.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the full rent owed for the month of February, 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the tenant's door on January 9, 2010 at 2:55 p.m. The landlord has provided written confirmation that 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.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. However, Section 19 of the Act states:

A landlord must not require or accept either a security deposit or pet damage deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement. If a landlord accepts a security deposit or pet damage deposit that is greater than the amount permitted, the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

The tenancy agreement submitted indicates that a security deposit of \$5,000.00 was paid on February 28, 2009 and as such I order that the rent for February, 2010 be deducted from this amount leaving a security deposit balance of \$2,500.00.

As the balance is still greater in value than the equivalent of $\frac{1}{2}$ of one month's rent, I further order that the tenant may deduct \$1,250.00 from future rent due.

I also note that in both the tenancy agreement and in the email correspondence between the parties there is mention of a requirement to provide a credit report by March 15, 2009. While the parties agreed to this, it is not a material term of the tenancy agreement and failure of the tenant to provide a credit report has no effect on the tenancy.

Conclusion

Based on my findings above, I find the landlord's 10 Day Notice to End Tenancy has no effect and I dismiss the application in its entirety. I find the tenancy remains in full force and effect.

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 28, 2010.

Dispute Resolution Officer