



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 20, 2010 the landlord served the tenants 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 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 tenants 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 tenants;
- A copy of a residential tenancy agreement which was signed by the parties on September 1, 2009 for a month to month tenancy beginning on September 1, 2009 for the monthly rent of \$700.00 with no indication of when the rent is due and a security deposit of \$375.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 31, 2009 with an effective vacancy date of January 10, 2010 due to \$755.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants had failed to pay the full rent owed for the month of November and December, 2009 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent personally on December 31, 2009 at 10:30 a.m. The landlord has provided written confirmation 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 the tenancy agreement submitted does not state when what day of the month is the first day of the rental period, I am unable to determine if the 10 Day Notice to End Tenancy for Unpaid Rent citing the rent was due on December 1, 2009 is valid.

Conclusion

As I am unable to determine the validity of the Notice to End Tenancy, I order that the direct request proceeding be reconvened in accordance with Section 74 of the Act. 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 and any evidence that will be introduced at the hearing by the landlord must be served upon each respondent, in accordance with Section 89(1) 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 29, 2010.

Dispute Resolution Officer