



Dispute Resolution Services

Page: 1

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 for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 31, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the evidence and written submissions of the Landlord, I find that the Tenant was served as required by s. 89 of the Act 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 documentary evidence:

- 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 August 23, 2009 for a 12 month fixed term tenancy beginning September 1, 2009 for the monthly rent of \$1,250.00 (or \$1,200.00 if the Tenant paid the electric bill for another unit in the rental property) due on 1st of the month and a security deposit of \$600.00 was paid on or about August 23, 2009; and



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 21, 2009 with an effective vacancy date of December 31, 2009 due to \$1,430.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenant had arrears of rent for November 2009 of \$230.00 and failed to pay the rent owed for the month of December, 2009 and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the door of the Tenant's rental unit on December 21, 2009. 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 also provided in his evidence package, copies of 3 cheques from the Tenant totaling \$1,480.00. One of those cheques is dated December 18, 2009 and the other 2 are dated December 2009. There is no evidence from the Landlord as to whether those cheques were cashed and if not, why not.

Analysis

I have reviewed all of the documentary evidence and accept that the Tenant been served with the Notice to End Tenancy as declared by the Landlord. The Notice is deemed to have been received by the Tenant on December 24, 2009, and the effective date of the Notice is amended to January 4, 2010 pursuant to section 53 of the *Act*.

However, it is not clear on the evidence before me that the Tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Conclusion

I find that further information is required to determine if the Tenant paid the overdue rent within 5 days of receiving the 10 Day Notice. Consequently, I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the tenant within **three (3) days** of receiving this decision in accordance with section 88 of the *Act*. 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 20, 2010.

Dispute Resolution Officer