

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the *Residential Tenancy Act* (the Act).

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 apply the security deposit in partial satisfaction of any monetary award; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 55, 67, and 72 of the Act. I have reviewed all documentary evidence submitted by the Landlord.

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement, signed by the Landlord on April 1, 2009 and by the Tenant on May 1, 2009. The tenancy agreement indicates a monthly rent of \$1,050.00 due on the first day of each month. The tenancy commenced on April 1, 2009. The tenancy agreement provides for a security deposit in the amount of \$525.00.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 1, 2010, with an effective vacancy date January 7, 2010 for \$1,050.00 in unpaid rent for the month of January, 2010.
- A Proof of Service document signed by a witness to the service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities upon the Tenant;

- A copy of the Landlord's Application for Dispute Resolution, filed January 19, 2010; and
- A copy of the Proof of Service of the Notice of Direct Proceeding upon the Tenant.

Analysis

The Landlord is alleging unpaid rent which was due on January 1, 2010. The Notice to End Tenancy was issued on January 1, 2010. The Notice was therefore issued prematurely, as the Tenant had until midnight on January 1, 2010, to pay January's rent. The earliest effective date the Landlord could allege unpaid rent for January is January 2, 2010.

Therefore, the Notice to End Tenancy dated January 1, 2010, is cancelled and of no force or effect. The Landlord's application is dismissed.

Conclusion

The Landlord's application is dismissed in its entirety.

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
