



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

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 Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a monetary order and filing fee costs.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding document which declares that on January 21, 2010, the landlord served the male and female tenant with the Notice of Direct Request Proceeding via a single registered mail package sent to the rental unit service address indicated on the Application. The landlord provided a copy of a completed Canada Post registered mail receipt and Proof of Service document as proof of service.

The landlord provided a copy of a Canada Post registered mail receipt and Proof of Service document indicating that the male tenant was served the Notice of Direct Request on January 25, 2010; however, the receipt does not provide the full address used for service of the Notice. Therefore, as I cannot assume the address used was the service address indicated on the Application, I find that the male tenant was not individually served with Notice of this Proceeding.

Section 88(1) of the Act determines the method of service for documents. The landlord has applied for a monetary Order which requires that the landlord to separately serve each respondent as set out under section 89(1). In this case there is no evidence before me that each tenant has been properly served with the Notice of this Direct Request Proceeding claiming a monetary Order, as required by section 89(1) of the Act. The package mailed on January 21, 2010, was sent to both the tenants in one envelope; therefore, I am unable to determine which tenant received that mail. The registered mail sent on January 25, 2010, does not provide the full address used for service to the male tenant. Therefore, I find that the request for a monetary Order against the tenants is dismissed with leave to reapply.

The landlord has requested an Order of possession against both tenants. Section 89(2) of the Act determines that the landlord may serve the Notice by registered mail to the address at which the tenant resides. Therefore, I find that the registered mail sent on

January 21, 2010, was served to at least one of the tenants, on the fifth day after mailing. I find, as both tenants are signatories to the tenancy agreement; that by serving at least one of the tenants by registered mail, the second tenant is deemed to have been served via an adult with whom they reside. Therefore; both parties have been sufficiently served with the portion of the Application for Dispute Resolution relating to section 55 of the Act, requesting an order of possession.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

May the landlord retain the deposit paid in partial satisfaction of the monetary claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each tenant as required for the purpose of an Order of possession;
- A copy of a residential tenancy agreement which was signed by the parties on January 1, 2010, indicating \$1,500.00 per month rent due on the first day of the month and that on November 30, 2009 a deposit in the sum of \$750.00 was paid;
- A copy of an undated "Agreement" signed by the tenants;
- A copy of a Rental Application for the female tenant signed on December 29, 2009;
- Copies of bank records indicating a NSF rent cheque for December 2009 and a NSF cheque for the deposit paid on November 30, 2009;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 13, 2010, with an effective vacancy date of January 23, 2010, for \$3,000.00 in unpaid rent due on January 1, 2010.

Documentary evidence filed by the landlord indicates that the tenants were personally served a 10 Day Notice to End Tenancy for Unpaid Rent by the landlord's agent at the rental unit address, on January 13, 2010 at 4:26 p.m. The landlord provided a copy of a proof of service document signed by the female tenant and another individual, whose signature is illegible; acknowledging service of the Notice. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy

would end. There is no evidence before me that the tenants applied to dispute the Notice to End Tenancy within five days. I accept that the tenants have been served with Notice to End Tenancy on January 13, 2010.

The landlord's Application requests loss of February 2010, rent revenue and unpaid December 2009, rent and January 2010, rent.

Analysis

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that this tenancy commenced on December 1, 2009. I base this finding on the signed tenancy agreement submitted as evidence. The tenants signed the agreement after the tenancy commenced; however, the evidence submitted indicating NSF cheques issued for December 2009 rent and the deposit cheque issued in November 2009, also support the landlord's submission that the tenancy did commence on December 1, 2009.

I have determined that, in relation to the claim for monetary compensation, the tenants were not each properly served with Notice of this Direct Request Proceeding. Therefore, the monetary claim is dismissed with leave to reapply. Further, claims for future revenue loss are not considered via the Direct Request Procedure.

An Order of possession has been issued against both tenants, who were properly served with the Application for Dispute Resolution and the Notice to End Tenancy as required under sections 88 and 89 of the Act.

As the landlord's Application has only partial merit I dismiss the claim for filing fee costs.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenants**. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

The monetary claim against the tenants has been dismissed with 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: February 04, 2010.

Dispute Resolution Officer