



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 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 and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding document which declares that on January 27, 2010 at 6:10 p.m. the landlord personally served the female tenant with the Notice of Direct Request Proceeding at the rental unit address. The landlord provided a signed document declaring the male tenant was personally served with Notice of the Direct Request Proceeding, by giving a copy of the Notice to the female tenant.

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 serve each respondent as set out under section 89(1). In this case only one of the two tenants has been personally served with the Notice of Direct Request Proceeding document. Therefore, I find that the request for a monetary Order against both tenants must be amended to include only the female tenant who has been properly served with Notice of this Proceeding. As the second tenant has not been properly served the Application for Dispute Resolution as required by section 89(1) of the Act the monetary claim against the male tenant is dismissed without 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 leave a copy of the Application for Dispute Resolution related to a request for an Order of possession at the tenant's residence with an adult who apparently resides with the tenant. As both tenants are signatories to the tenancy agreement I have determined that 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?

Is the landlord entitled to a monetary Order 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 the female tenant;
- A copy of a residential tenancy agreement which was signed by the parties on October 21, 2009 indicating \$950.00 per month rent due on on the first day of the month and that a deposit in the sum of \$475.00 was paid on November 1, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 18, 2010 with an effective vacancy date of January 29, 2010 for \$950.00 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 to the female tenant on January 19, 2010, at 12:30 p.m. with a witness present. 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

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 have issued a monetary Order against the female tenant who was personally served with the Notice of Direct Request Proceeding as required under section 89(1) of the Act. An Order of possession has been issued against both tenants, who were properly served with Notice and the Application for Dispute Resolution and the Notice to End

Tenancy as required under sections 88 and 89 of the Act; as the male tenant has been served via an adult with whom he resides.

I find that the landlord is entitled to retain the deposit in partial satisfaction of the monetary claim.

As the landlord's Application has merit I find that the landlord is entitled to 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.

I find that the landlord is entitled to monetary compensation under section 67 in the amount of **\$1,000.00** comprised of \$950.00 rent owed for January 2010, and the \$50.00 fee paid by the Landlord for this application. The landlord will retain the deposit in the sum of \$475.00 and I have issued a monetary Order for the balance owed of **\$525.00**. This order must be served on the female Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The monetary claim against the male tenant has been dismissed without 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 08, 2010.

Dispute Resolution Officer