



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 *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 29, 2010 the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit address. The landlord provided copies of Canada Post receipts and tracking numbers as evidence of service. Section 90 of the Act determines that a document is deemed to have been served on the fifth day after mailing. The landlord's Proof of Service documents submitted as evidence indicate that the landlord has also posted the Notice of Direct Request at an unknown address. I have accepted the registered mail evidence as sufficient proof of service to each tenant.

Based on the written submissions of the landlord, I find that the tenants have been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

May the landlord retain the deposit paid?

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;
- A copy of a residential tenancy agreement which names and was signed on November 26, 2009 by the landlord and only one of the tenants named on the Application (M.P.), indicating a monthly rent of \$1,650.00 due each month, with no set due date and that a deposit of \$825.00 was paid on November 26, 2009;
- A copy of a TD Bank letter dated January 22, 2010 indicating that the cheque issued by the tenant on January 1, 2010 for rent owed was NSF;
- A copy of a January 22, 2010 message from the tenant to the landlord indicating that the tenant has until January 23, 2010 to pay his rent and that the cheque for January rent should be deposited on January 22, 2010;
- A copy of a January 8, 2010 Canada Trust document for an \$825.00 deposit which has "stop payment" written on it;
- A December 15, 2009 cheque issued to the landlord for \$825.00, marked as a stop payment; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 15, 2010 with a stated effective vacancy date of January 25, 2010, for \$1,650.00 in unpaid rent due on January 1, 2010.

Documentary evidence filed by the landlord indicates that the tenant's have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery to tenant J.G., on January 15, 2010 at 12:50 p.m. with a witness present.

Copies of the cheques issued to the landlord indicate the names of both respondents.

Analysis

The tenancy agreement submitted as evidence names only one of the two respondents named on the Application. I have reviewed all documentary evidence and find that the landlord has served the 10 Day Notice to End Tenancy to a person who is not identified as a tenant on the tenancy agreement. There is no evidence before me that the person served with the 10 Day Notice is an adult who resides with the tenant and, in the absence of his name or signature on the tenancy agreement, I am unable to assume that this person is a tenant.

I am also unable to assume that the presence of both names on the cheques indicate that both of the respondents live together and are tenants at the same residence.

In the absence of any details in relation to the person who was served the 10 Day Notice to End Tenancy and on the basis that the only respondent M. P. signed the tenancy agreement, I find that this Application must be reconvened to a participatory hearing.

Conclusion

Having found that the landlord has failed to prove service of the 10 day Notice to End Tenancy to an adult who resides with the tenant, I order that the direct request proceeding be reconvened in accordance with section 74 of the Act.

Based on the foregoing, I find that a conference call hearing is required in order to determine the details of service of the 10 Day Notice to End Tenancy. 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: February 10, 2010.

Dispute Resolution Officer