



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 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 February 2, 2010 at 2:10 p.m. the landlord personally served the tenant with the Notice of Direct Request Proceeding at the rental unit address. Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

Based on the written submissions of the landlord, I find that the tenant has 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 the tenant;

- A copy of a residential tenancy agreement which was signed by the parties on June 24, 2009, indicating a monthly rent of \$650.00 due on the first day of the month and that a deposit of \$325.00 was paid on June 24, 2009;
- A copy of a One Month Notice to End Tenancy for Cause issued on September 30, 2009;
- A copy of a tenant ledger to January 28, 2010 indicating rent and late payment arrears in the sum of \$1,350.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on December 7, 2009;
- A copy of three receipts issued in November, December 2009, and January 2010, each indicating use and occupancy only; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 2, 2010 with a stated effective vacancy date of January 14, 2010, for \$1,350.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay \$550.00 owed for each December 2009, and January 2010, and was served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery on January 4, 2010 at 10:30 a.m., with a witness present. The Act deems the tenant was served on the day of personal delivery.

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 from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord.

The notice is deemed to have been received by the tenant on January 4, 2010.

I accept 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.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice; January 14, 2010.

The tenant ledger supplied as evidence indicates that the tenant owed \$550.00 per month rent and that in January 2010 he was charged \$650.00 rent. Despite the notation on the tenancy agreement I have determined that rent owed was \$550.00 per month, as indicated within the financial document and the Application.

Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order for unpaid December 2009, and January 2010, rent, and the application fee cost.

The landlord is holding a deposit in the sum of \$325.00 and I find the landlord may retain the deposit in partial satisfaction of rent owed.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant . This Order 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 pursuant section 67 in the amount of **\$1,150.00** comprised of \$1,100.00 in unpaid December 2009, and January 2010 rent owed and the \$50.00 fee paid for this application.

I order that the landlord may retain the deposit and interest held of \$325.00 in partial satisfaction of the claim and grant an Order for the balance due of **\$825.00**. This Order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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 11, 2010.

Dispute Resolution Officer