



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 4, 2010 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit address. The landlord provided a Canada Post receipt and tracking number 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.

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 initialed by the parties on an undisclosed date, indicating a monthly rent of \$400.00, with no due date, a deposit of \$200.00 was to be paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 18, 2010 with a stated effective vacancy date of January 18, 2010, for \$400.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door on January 18, 2010, at 11 a.m. with a witness present. The Act determines that the tenant was served on January 21, 2010.

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.

The Application indicates that the tenant did not pay the deposit, or January rent in the sum of \$400.00. The Application was submitted on February 4, 2010; there is no indication if February rent was paid or, if it was paid, what the intention of the landlord was at the time of any payment.

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 21, 2010.

I am unable to determine when the rent is due. The written agreement submitted as evidence fails to include the standard terms required by section 13 of the Act; such as the date the tenancy commenced and when the rent is due. I am unable to assume that rent is due on the first day of the month. I am also unable to determine if any rent has been paid since the Notice was served on January 18, 2010. Therefore; I find that this Application must be convened to a participatory hearing during which the terms of the tenancy agreement any rent payments may be established.

Conclusion

Having found that the landlord has failed to provide a tenancy agreement which includes the date rent is payable and any information on the payment of February rent owed, 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 the tenancy agreement. 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 12, 2010.

Dispute Resolution Officer