



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 February 11, 2010 at 3:20 p.m. the landlord personally served the male tenant with the Notice of Direct Request Proceeding at the rental unit address.

The landlord provided a copy of a second Proof of Service of the Notice of Direct Request Proceeding document which declares that the male tenant was again served, at the same time; however, the female tenant's name appears in brackets, above the male tenant's name.

I find that the male tenant was personally served with Notice of the Direct Request Proceeding; however, I find that the female tenant has not been personally served with the Notice of this Proceeding as it appears she was served, via the male 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 male 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 female 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?

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 male tenant;
- A copy of a residential tenancy agreement which was signed by the parties on January 8, 2009 indicating \$750.00 per month rent due on or before the first day of the month and that a deposit in the sum of \$375.00 was paid on January 8, 2009;
- A copy of a Notice of Rent Increase issued on October 19, 2009 for a rent increase effective December 1, 2009 which indicates the tenancy commenced on December 1, 2008; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 2, 2010, with an effective vacancy date of February 12, 2010, for \$1,524.00 in unpaid rent due on February 1, 2010.

Documentary evidence filed by the landlord indicates that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent by the landlord by posting to the door on February 2, 2010, at 10:20 a.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. I accept that the tenants have been served with the Notice to End Tenancy effective on February 5, 2010.

Analysis

Section 53(2) of the Act provides:

If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Therefore, the effective date of the Notice is changed to February 15, 2010.

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, February 15, 2010.

The tenancy agreement indicates that the tenancy commenced on February 1, 2009; the rent increase was to take effect on December 1, 2009. Section 42 of the Act prohibits any rent increase until at least twelve months have elapsed since the start of the tenancy. As the rent increase imposed was to take effect less than twelve months from the start date of the tenancy. I have relied upon the tenancy agreement submitted as evidence and find that this increase formed a breach of the Act and will consider only unpaid rent at the rate set at the beginning of the tenancy.

I find that the landlord is entitled to unpaid January and February 2010, rent in the sum of \$1,500.00.

I find that the landlord may retain the deposit paid in the sum of \$375.00 in partial satisfaction of the monetary claim.

I find that the landlord's Application has merit and that the landlord is entitled to filing fee costs.

I have issued a monetary Order against the male 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.

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 **\$1,550.00** comprised of \$1,500.00 January and February 2010, rent owed and the \$50.00 fee paid by the Landlord for this application. This order must be served on the male Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The monetary claim against the female tenant is 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 17, 2010.

Dispute Resolution Officer