



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 10, 2010 the landlord served both tenants in the same registered mail package, sent to the rental unit address.

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). Therefore, in the absence of proof of service to each respondent, I find that the request for a monetary Order against both tenants must be dismissed with 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 send a copy of the Application for Dispute Resolution via registered mail to the address at which the tenant lives or may leave a copy of the Application with an adult who apparently lives with the tenant. As the landlord has sent the required documents to the address at which the tenants live I find that on the fifth day after mailing one of the tenants was sufficiently served with the portion of the Application for Dispute Resolution relating to section 55 of the Act, requesting an order of possession and that the second tenant has been served via an adult with whom he resides.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

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 both tenants for the purposes of an Order of possession;
- A copy of a residential tenancy agreement which was signed by the parties on July 18, 2009, indicating a monthly rent of \$1,400.00 due on the first day of the month and that a deposit of \$700.00 was paid on July 18, 2009;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 2, 2010, with a stated effective vacancy date of February 12, 2010, for \$1,400.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery on February 2, 2010, at 7:30 p.m. to tenant M. L., with a witness present. The Act deems the tenants were served on the day of personal delivery.

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 from the date of service.

Analysis

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

The notice is deemed to have been received by the tenants on February 2, 2010, as provided by section 89 of the Act, the second tenant has been served via an adult with whom he resides.

I accept the evidence before me that the tenants have 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 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.

Therefore, I find that the landlord is entitled to an Order of possession and the application fee cost.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenants and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to filing fee costs, as provided by section 72(1) of the Act, in the amount of \$50.00 for the fee paid for this application.

I order that the landlord may retain from the deposit held, the sum of \$50.00. The balance of the deposit; \$650.00 must be held in trust and disbursed as required by section 38 of the Act.

The monetary claim is dismissed with 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