



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 February 15, 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 a Canada Post receipts and tracking numbers as evidence of service to each tenant. 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 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 was signed by the parties on December 16, 2009, indicating a monthly rent of \$950.00 due on the first day of the month and that a deposit of \$475.00 was paid on December 1, 2009; and
- 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 7, 2010, for \$1,027.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door on February 2, 2010. The Act deems the tenants were served on February 5, 2010.

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.

The Application indicates the tenant did not pay February rent or the late fees owed.

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 5, 2010.

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.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to February 15, 2010.

It appears the landlord has included fees as unpaid rent in the Notice. Fees are not rent and should not be included as such on the Notice. Further, Residential Tenancy Regulation 7 determines allowable rates for fees charged; a late fee may not exceed \$25.00. The tenancy agreement addendum, clause 2, submitted as evidence includes \$75.00 late fees; this clause of the addendum is unenforceable, as it fails to conform to the Regulation.

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, a monetary Order for unpaid rent, and the application fee cost.

I find that the landlord may retain the deposit paid, in partial satisfaction of the monetary claim.

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 monetary compensation pursuant section 67 in the amount of **\$1,000.00** comprised of \$950.00 February 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 \$475.00 in partial satisfaction of the claim and grant an Order for the balance due of **\$525.00**. This Order must be served on the tenants 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 24, 2010.

Dispute Resolution Officer