

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, an Order to retain the security deposit in partial satisfaction of the claim, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord's Agent submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 27, 2010 the Landlord's Agent served the Tenant with the Notice of Direct Request Proceeding, personally at the rental unit. The Tenant signed a copy acknowledging receipt of the Direct Request package. Based on the written submissions of the Landlord's Agent, I find that the Tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the Landlord or her Agent is entitled to an Order of Possession for unpaid rent; to a Monetary Order for unpaid rent; and to keep all or part of the security deposit pursuant to sections 38, 46, 55, and 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

I have carefully reviewed the following documentary evidence submitted by the Landlord's Agent:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of a residential tenancy agreement which displays the Landlord's name and permission for the Agent to act on behalf of the Landlord which was signed by the Agent and the Tenant on July 1, 2008 for a month to month tenancy effective July 1, 2008 for the monthly rent of \$700.00 due on 1st of the month and a deposit of \$250.00 was paid on July 1, 2008; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 18, 2010 with an effective vacancy date of January 28, 2010 due to \$350.00 in unpaid rent.

Documentary evidence filed by the Landlord's Agent indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally to the Tenant on January 18, 2010 at 7:15 p.m. The Tenant signed the proof of service form acknowledging receipt of the 10 Day Notice to End Tenancy.

Analysis

Upon review of the evidence I have determined that there is no evidence that the applicant named in this proceeding has any authorization to act as the agent to the legal Landlord named in the tenancy agreement or that this authorization to act as the Landlord has been provided in writing from the Landlord to the Tenant. Although the tenancy agreement lists the Applicant's name as the Landlord's Agent, I note that the tenancy agreement was created by the Applicant listing his own name as Agent, and then signed by the Applicant and not the Landlord.

A "**tenancy agreement**" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. I find that based on the above definition, oral terms contained in, or form part of, tenancy agreements and may still be recognized and enforced; however verbal tenancy agreements do not meet the requirements for a Direct Request Proceeding and that evidence must be submitted to prove that a tenancy agreement exists between the applicant and the respondent.

Based on the foregoing, I find that a conference call hearing is required in order to determine the details of the Applicant's claim. Notices of Reconvened Hearing are enclosed with this decision for the Applicant and are required to be served to the Respondent Tenant by the Landlord.

Conclusion

I HEREBY FIND that a conference call hearing is required in order to determine the merits of this Application for Dispute Resolution. Notices of Reconvened Hearing are enclosed with this decision for the Landlord.

A copy of the Notice of Reconvened Hearing, this Interim Decision, the Application for Dispute Resolution, and any evidence that will be introduced at the hearing by the Landlord must be served upon Tenant, in accordance with section 88 of the *Act*, within **three (3) days** of receiving this decision.

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 09, 2010.

Dispute Resolution Officer