



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 Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 26, 2010 the landlord served each respondent with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the written submissions of the landlord, I find that both the respondents have been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the respondents for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for each respondent;
- A copy of a residential tenancy agreement which was signed by the landlord and one of the respondents on May 1, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 15, 2010 with an effective vacancy date of January 25, 2010 due to \$1100.00 in unpaid rent.

Documentary evidence filed by the landlord(s) indicates that the tenant(s) had failed to pay the full rent owed for the month of January 2010 and that the respondents were served a 10 Day Notice to End Tenancy for Unpaid Rent which was posted on the door of the tenant's rental unit on January 15, 2010 and therefore is deemed served three days later.

The Notice states that the tenant(s) had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant(s) did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the respondents have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant(s) on January 18, 2010 and the effective date of the notice is amended to January 28, 2010 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenant has 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 tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

First of all I have removed the second respondent (**M.Z.**) from the orders issued, as he is not named as one of the tenants on the tenancy agreement.

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant(s)**. This order must be served on the tenant(s) 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 pursuant section 67 in the amount of \$1150.00 comprised of \$1100.00 rent owed and the \$50.00 fee paid by the Landlord(s) for this application. This order must be served on the tenant(s) and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I make no order regarding the security deposit, because the tenancy agreement does not list an amount paid for security deposit however section 72 of the act states:



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72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

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 10, 2010.

Dispute Resolution Officer