

DECISION

Dispute Codes OPR MNR 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 Landlords for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, and to recover the cost of the filing fee from the Tenant for this application.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 5, 2010 at 12:35 p.m. the Landlord served the Tenant with the Notice of Direct Request Proceeding, via registered mail. Canada Post receipts were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing package on February 10, 2010, five days after it was mailed in accordance with section 90 of the Act. Based on the written submissions of the Landlords, I find that the Tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession for unpaid rent and to a Monetary Order for unpaid rent, pursuant to sections, 55, of the *Residential Tenancy Act (Act)*?

Background and Evidence

I have carefully reviewed the following documentary evidence submitted by the Landlords:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of a residential tenancy agreement which was signed by all parties on July 7, 2008, for a month to month tenancy effective July 1, 2008 for the monthly rent of \$1,200.00 due on 1st of the month, a security deposit was not paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 29, 2010 with an effective vacancy date of February 2, 2010 due to \$700.00 in unpaid rent.

Documentary evidence filed by the Landlords indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent, personally on January 29, 2010, at 2:30 p.m. in the presence of a witness.

An audit note was placed on the Landlords' application which states that the Landlords advised that they have received payment of rent for January 2010, since making this application, and by doing so reinstated the tenancy agreement. The audit note also documents that the Tenant has failed to pay the February 2010 rent and that the Landlords and their agent have issued another 10 Day Notice to End Tenancy for unpaid rent and have filed under a separate application for dispute resolution.

Analysis

The *Residential Tenancy Policy Guideline #11* provides that if a landlord accepts rent for a period after the effective date of a Notice, without issuing the Tenant a receipt which states the money was accepted for "use and occupation only", then an implied waiver of the notice to end tenancy has occurred and the tenancy has been reinstated.

In the presence of the audit notes and the Landlords' additional application for dispute resolution I find that the Landlords have reinstated the tenancy agreement cancelling the 10 Day Notice to End Tenancy that was issued on January 29, 2010; therefore I hereby dismiss the Landlords application.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 29, 2010, is hereby cancelled and is of no force or effect.

I HEREBY DISMISS the Landlords' application, 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 22, 2010.

Dispute Resolution Officer