

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 Tenants for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 13, 2010 the Landlord served each Tenant with the Notice of Direct Request Proceeding, in person at the rental unit. Based on the written submissions of the Landlord, I find that the Tenants have been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent under section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order a) for unpaid rent, and b) to retain the security deposit on sections 55 and 72 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- 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 all parties on January 25, 2007 for a fixed term tenancy beginning February 1, 2007 and set to switch to a month to month tenancy after January 31, 2008, for the monthly rent of \$800.00 due on 1st of the month and a security deposit of \$400.00 and a pet deposit of \$400.00 was paid on or before February 1, 2007; and
- A copy of a rent increase which stipulates that the Tenants' rent will increase from \$825.00 to \$855.00 per month effective February 1, 2010 ; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, February 1, 2010, with an effective vacancy date of February 12, 2010, due to \$260.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the Tenants' door on February 2, 2010, at 5:41 p.m. in the presence of a witness.

Analysis

The Landlord has provided proof that a 10 Day Notice to End Tenancy which was issued on February 1, 2010 for rent that was payable on the February 1, 2010.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The Landlord is seeking to end the tenancy due to this breach; however, the Landlord has the burden of proving that the Tenants were served with a 10 day Notice to End Tenancy that has been issued in accordance with the *Act*.

Upon review of the evidence before me I find that the Landlord issued the 10 Day Notice to End Tenancy prematurely, demanding rent that was not yet past due as the Tenants had until 12:01 a.m. on February 2, 2010 before the rent could be deemed late.

Based on the above I find the 10 Day Notice to End Tenancy issued on February 1, 2010 to be invalid and of no force or effect; therefore I dismiss the Landlord's application, without leave to reapply.

As the Landlord has not been successful with her claim I decline to award recovery of the filing fee.

Conclusion

I HEREBY ORDER that the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated February 1, 2010 is invalid and without force or effect.

I HEREBY DISMISS the Landlord's 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