

DECISION

Dispute Codes - OPR, MNR, 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 February 16, 2010 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Act states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the written submissions of the landlord, 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 is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 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 Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties in December 2008 for a fixed term tenancy beginning on December 1, 2008 and converting to a month to month tenancy on July 1, 2009 for the monthly rent of \$1,000.00 due on the 1st of the month and a security deposit was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 3, 2010 with an effective vacancy date of February 13, 2010 due to \$550.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of February, 2010 and that the tenant was served a 10 Day

Notice to End Tenancy for Unpaid Rent when it was served by posting it to the door of the tenant's rental unit on February 3, 2010 sometime in the morning. The landlord has provided written confirmation that this service was witnessed by a third party.

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

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on February 6, 2010 and the effective date of the notice is amended to February 16, 2010, pursuant to Section 53 of the *Act*.

I accept the evidence before me that the tenant 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.

However, the 10 Day Notice to End Tenancy for Unpaid Rent states that the amount due on February 1, 2010 was for \$550.00 and the Application for Dispute Resolution states "Tenant has not paid rent in the amount of \$675.00". As a result, the landlord has failed to establish the amount owing.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

As I am not able to determine the amount owing to the landlord, I dismiss this portion of 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 24, 2010.

Dispute Resolution Officer