



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 *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 19, 2010 the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit address. The landlord provided a Canada Post receipts and tracking numbers as evidence of service. Section 90 of the Act determines that a document is deemed to have been served on the fifth day after mailing.

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

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord submitted the following evidentiary material:

- 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 the parties on November 15, 2009, indicating a monthly rent of \$900.00 due on the first day of the month and that a deposit of \$450.00 was paid on November 15, 2009;
- A copy of a Rental Incentive Agreement in which the landlord has provided monthly rent deductions, accompanied by what appears to be a penalty if the tenancy agreement is breached; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 8, 2010 with a stated effective vacancy date of January 8, 2010, for \$750.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door on January 8, 2010 at 3 p.m. with a witness present. The Act deems the tenants were served on January 11, 2010.

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

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord.

The notice is deemed to have been received by the tenants on January 11, 2010.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to January 21, 2010.

I accept the evidence before me that the tenants have failed to pay the rent owed within the 5 days granted under section 46 (4) of the Act. However, as the landlord has claimed only a portion of the rent payable and has not provided any documentation detailing the amount owed I find that the monetary claim is dismissed with leave to reapply. I base this decision on the Rental Incentive Agreement, as I am unable to determine if an additional amount of rent owed has been levied against the tenants or not.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Therefore, I find that the landlord is entitled to an Order of possession and the application fee cost. The landlord may deduct \$50.00 from the deposit held in trust and will retain the balance of \$400.00 which is to be disbursed as required by section 38 of the Act.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenants and the Order 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 \$50.00 for the fee paid for this application and that this amount may be deducted from the deposit held in trust. The balance of the deposit will be disbursed as required by section 38 of the Act.

The monetary claim is dismissed with 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: March 04, 2010.

Dispute Resolution Officer