



Dispute Resolution Services

Page: 1

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 25, 2010 at 2:40 p.m. the landlord served each tenant with the Notice of Direct Request Proceeding via personal delivery at the rental unit address. Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

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 commencing October 1, 2006, which was signed by the male tenant only on September 26, 2006, indicating a monthly rent of \$660.00 due by the first day of the month and that a deposit of \$360.00 was paid on September 14, 2006 and that the female named as a tenant is included on the agreement as an occupant;

- A copy of a Notice of Rent Increase issued on June 30, 2008, effective October 1, 2007 in the sum of \$25.00 bringing rent owed from \$720.00 to \$745.00 per month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on with a stated effective vacancy date of February 5, 2010, for \$1,515.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant's have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door of the rental unit on February 5, 2010 at 8:35 p.m. with a witness present. The Act deems the tenants were served on the third day after posting; February 8, 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 tenant's did not apply to dispute the Notice to End Tenancy within five days from the date of service.

The Application indicates the tenants have not paid \$25.00 for December, 2009, \$745.00 for January and February 2010.

Analysis

The male tenant has signed the tenancy agreement and the female tenant is referred to as an occupant, who did not sign the tenancy agreement. An occupant has no rights or obligations under the tenancy agreement and, in the absence of any evidence that the female tenant has a separate agreement with the landlord, I find that she is an occupant and that the monetary claim against this individual is dismissed.

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 8, 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 February 18, 2010.

The tenancy agreement indicates rent payable in the sum of \$660.00 per month; commencing October 1, 2006. The earliest date a rent increase could be imposed was October 1, 2007. The Notice of Rent Increase issued on June 30, 2008, indicates a previous rent increase effective August 1, 2007 to \$720.00. There is no evidence before me that the increase made effective August 1, 2007 complied with the Act. The tenancy commenced October 1, 2006; the earliest possible date for a rent increase, pursuant to section 42(1) of the Act, was October 1, 2007.

In the absence of evidence that establishes rent increases as required by the Act I find that the landlord is entitled to unpaid rent for January and February in the sum of

\$660.00 each and dismiss without leave to reapply the claim for December arrears claimed in the sum of \$25.00.

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; February 18, 2010.

The landlord is retaining a deposit plus interest in the sum of \$371.45.

Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order for unpaid rent and the application fee cost.

I dismiss without leave the portion of the Application requesting a monetary Order against the occupant named as a tenant on the Application.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant 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 **\$1,370.00** comprised of \$1,320.00 January and February 2010 rent owed and the \$50.00 fee paid for this application. The claim for unpaid December 2009 rent is dismissed without leave.

I order that the landlord may retain the deposit and interest held of \$371.45 in partial satisfaction of the claim and grant an Order for the balance due of **\$998.55**. This Order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The monetary claim against the female occupant is dismissed without leave.

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 10, 2010.

Dispute Resolution Officer