



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 March 16, 2010 the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided copies of 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 May 30, 2009, indicating a monthly rent of \$1,400.00 due on the first day of the month and that a deposit of \$700.00 was paid on May 20, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on March 7, 2010 with a stated effective vacancy date of March 17, 2010, for \$960.00 in unpaid rent. The Notice had a schedule of parties attached, which named the 3rd tenant, L.L.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery to tenant B.N. on March 7, 2010 with a witness present at 6 p.m. The Act deems the tenants were served on March 7, 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.

The Application details indicate that the landlord is claiming \$1,060.00 in unpaid rent and utilities.

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 March 7, 2010.

I accept the evidence before me that the tenants have 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 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.

The Notice indicates that the tenant owed \$960.00 rent on March 1 and \$100.00 in utilities. The direct request proceeding process considers claims for unpaid rent only. Further, the landlord has not submitted any evidence of a utility bill. Therefore, the claim for utilities is dismissed with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order for unpaid March rent on the sum of \$960.00, and the application fee cost.

There is no evidence before me that the tenants have paid the rent in full or that the tenancy has been reinstated.

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 **\$1,010.00** comprised of \$960.00 March 2010 rent owed and the \$50.00 fee paid for this application.

I order that the landlord may retain the deposit and interest held of \$700.00 in partial satisfaction of the claim and grant an Order for the balance due of **\$310.00**. This Order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The claim for unpaid utilities 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 29, 2010.

Dispute Resolution Officer