



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 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 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 July 17, 2009, indicating a monthly rent of \$1,395.00 due on or before the first day of the month and that deposits in the sum of \$1,395.00 were paid on July 17, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on March 4, 2010, with a stated effective vacancy date of March 14, 2010, for \$2,880.00 in unpaid rent and utilities.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent and utilities owed and served the 10 Day Notice to End Tenancy for Unpaid Rent by registered mail sent to both tenants at the rental unit address, on March 5, 2010. The landlord supplied a copy of a Canada Post registered mail receipt as evidence of service to the rental unit address. The Act deems the tenants were served on the fifth day after mailing.

The Notice states that the tenants had five days to pay the rent and utilities 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 indicates that the tenants have not paid February rent and utilities in the sum of \$1,692.46 and March rent and utilities in the sum of \$1,440.16; totaling \$3,132.62.

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 10, 2010.

I accept the evidence before me that the tenants have failed to pay rent owed within the 5 days granted under section 46 (4) of the *Act*.

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 March 20, 2010.

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.

In relation to the monetary claim, the landlord has not provided any breakdown of the amount claimed. I am unable to determine the amount of rent and utilities owed by the tenants. The monetary amount indicated on the Application differs from that shown on the Notice to end tenancy. The landlord has claimed unpaid utilities; however, only unpaid rent may be considered via the Direct Request Proceeding process.

I note that the tenancy agreement addendum signed by the parties includes a late payment fee which is in breach of the Residential Tenancy Regulation; thus rendering the fee unenforceable. The fees charged for NSF payments also fail to comply with the Residential Tenancy Regulation 7.

Therefore, in the absence of a financial statement that provides an accounting of the amount claimed for unpaid rent, I find that the landlord's monetary claim is dismissed with leave to reapply.

The landlord is holding deposits paid in the sum of \$1,395.00. I find that the landlord is entitled to filing fee costs and that the landlord may retain \$50.00 from the deposit. The balance of the deposit in the sum of \$1,345.00.00 will continue to be held and must be disbursed as required by section 38 of the Act.

Therefore, I find that the landlord is entitled to an Order of possession and the application fee cost.

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** comprised of the \$50.00 fee paid for this application. The landlord will retain this amount from the deposits paid and continue to hold the balance of the deposits in trust. The balance of the deposits will be disbursed as required by section 38 of the Act.

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 31, 2010.

Dispute Resolution Officer