



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 number as evidence of service; however the receipt for tenant A.B. does not include a fully completed address that was used for service. The Proof of Service of Notice of Direct Request document for tenant A.B. also does not include the service address that was used. I am unable to assume the service address used for tenant A.B. is the rental unit address.

Section 88(1) of the Act determines the method of service for documents. The landlord has applied for a monetary Order which requires that the landlord serve each respondent as set out under section 89(1). In this case only one of the two tenants has been served with the Notice of Direct Request Proceeding document. Therefore, I find that the request for a monetary Order against both tenants must be amended to include only the tenant T. L. who has been properly served with Notice of this Proceeding. As the second tenant has not been properly served the Application for Dispute Resolution as required by section 89(1) of the Act the monetary claim against tenant A.B. is dismissed with leave to reapply; based upon my analysis below.

The landlord has requested an Order of possession against both tenants. Section 89(2) of the Act determines that the landlord may serve a copy of the Application for Dispute Resolution related to a request for an Order of possession to an adult who apparently resides with the tenant. As both tenants are signatories to the tenancy agreement I have determined that both parties have been sufficiently served with the portion of the

Application for Dispute Resolution relating to section 55 of the Act, requesting an order of possession.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order 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 tenant T.L.;
- A copy of a residential tenancy agreement which was signed by the parties on June 19, 2009 indicating \$995.00 per month rent due on or before the first day of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on March 4, 2010, with an effective vacancy date of March 14, 2010, for \$1,540.15 in unpaid rent due on March 1, 2010 and deposits paid in the sum of \$995.00 paid on June 19, 2009.

Documentary evidence filed by the landlord indicates that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent by the landlord via registered mail sent to both of the tenants at the rental unit address on March 5, 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. I accept that the tenants have been sufficiently served with notice to end tenancy effective on March 10, 2010.

The Application indicates that the landlord is seeking compensation for March rent and fines in the sum of \$1,540.15. The Application also mentions unpaid utilities. The Notice does not include any amount owed for unpaid 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 10, 2010.

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*.

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 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.

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

In relation to the monetary claim, the landlord has not provided any breakdown of the amount claimed. I am unable to determine how much rent is owed and what, if any unpaid utilities have been included in the amount claimed. Further, the landlord has included a claim for fees owed which may not 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 \$995.00. 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 \$945.00 will continue to be held and must 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**. This order must be served on the Respondents and 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 under section 67 in the amount of **\$50.00** comprised of the fee paid by the Landlord for this application. The landlord will retain \$50.00 from the deposits held in trust. The balance of the deposits will be disbursed as required by section 38 of the Act.

The monetary claim has been 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 31, 2010.

Dispute Resolution Officer