

DECISION

Dispute Codes - OPR, MNR, FF

Introduction

This matter was originally conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent.

The Dispute Resolution Officer who conducted the Direct Request required this matter to be dealt with via teleconference as there was no indication of who the Notice to End Tenancy was served to. The teleconference was attended by both landlords but not by the tenants.

During the hearing the landlord confirmed the tenant had left the rental unit on January 31, 2010, as such there is no need for an order of possession and the landlord's application was amended to reflect this.

The landlord testified the tenants were served notice of this hearing prior to them vacating the rental unit and after receipt of the previous Dispute Resolution Decision.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on September 6, 2009 for a one year fixed term tenancy beginning on September 15, 2009 for the monthly rent of \$1,250.00 due on the 1st of the month and a security deposit of \$625.00 was paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 4, 2010 with an effective vacancy date of January 15, 2010 due to \$2,315.00 unpaid rent;

- A copy of a handwritten note from the tenant to the landlord dated January 15, 2010 stating they would be moving out by January 31, 2010 and that they would be given the landlord the back rent as soon as possible and acknowledging the balance of \$2,315.00 from September 15, 2009 to January 31, 2010;
- An agreement to end the tenancy signed by the landlord and the female tenant acknowledging the debt in the amount of \$2,315.00 and that they will be moving out by January 31, 2010; and
- Confirmation that the Notice to End tenancy was served on the male tenant's girlfriend who is known by the landlord to reside at the rental unit.

Documentary evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the months of December, 2009; and January, 2010 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served by leaving with an adult who is known to reside on the property on January 4, 2010 at 9:00 p.m. The landlord has provided written confirmation that this service was witnessed by a third party.

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.

Analysis

I have reviewed all documentary evidence and accept that the tenants had been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on January 4, 2010 and the effective date of the notice is January 15, 2010.

I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the Act. I also accept the tenant acknowledged in writing the value of the outstanding rent in two documents submitted by the landlord.

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.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$2,365.00** comprised of \$2,315.00 rent owed and the \$50.00 fee paid by the landlord for this application.

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.

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 08, 2010.

Dispute Resolution Officer