

DECISION

Dispute Codes OPR MNR

Introduction

This hearing proceeded 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 for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 12, 2010, the Landlord served the Tenant with the Notice of Direct Request Proceeding, via registered mail. An “incomplete” Canada Post receipt was provided in the Landlord’s evidence.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession and a Monetary Order under section 55 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant; and
- Two pages of a tenancy agreement which displays the parties names, for a fixed term tenancy effective July 1, 2006 which switched to a month to month tenancy after January 30, 2006 (displayed as written on the agreement) for rent payable in advance of the first of each month in the amount of \$1,225.00; and
- Copies of two notices of rent increases which display how the rent increased from \$1,225.00 to the current monthly rent of \$1,321.00; and
- A copy of the tenant ledger; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, August 6, 2010, with an effective vacancy date of August 6, 2010 due to \$1,371.00 in unpaid rent which was due on August 1, 2010; and

- A notation on the Landlord's application that he is seeking \$1,371.00 which is comprised of \$1,321.00 of rent plus \$25.00 late fee plus \$25.00 bank fee; and

Documentary evidence filed by the landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the Tenant's door, in the presence of a witness.

Analysis

The Landlord has provided a copy of the 10 Day Notice to End Tenancy which was issued on August 6, 2010, which in the section "you have failed to pay rent in the amount of \$1,371.00 that was due on 01/08/2010 (Day Month Year)". The Landlord is seeking to end the tenancy due to this breach; however, the landlord has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy which meets the form, content, and service under sections 52 and 89 of the *Residential Tenancy Act*.

In this case I find that the 10 Day Notice issued by the Landlord does not meet the requirements of the Act as the Notice was issued listing "**rent**" of \$1,371.00 was due on August 1, 2010 and is now past due. The evidence supports rent is only \$1,321.00 and therefore if the August 2010 rent is unpaid, the Notice should display this amount and not \$1,371.00. Late fees and bank fees, while they may be payable pursuant to the tenancy agreement and/or the Act, they are not rent and cannot be listed on the 10 Day Notice as being late. These fees do not become payable until the rent is late and therefore do not become payable in this case until the second of the month.

As per the aforementioned I find the 10 Day Notice to End Tenancy for Unpaid rent is invalid and is of no force or effect. Having found the 10 Day Notice issued August 6, 2010, to be invalid, I hereby dismiss the Landlord's application, without leave to reapply.

The Proof of service form provided for the 10 Day Notice is incomplete. It does not provide a date or a time when the Notice was posted to the Tenant's door. This proof of service document does not meet the requirements of the Direct Request process.

The Canada Post receipt provided is incomplete as it does not provide the address to which the hearing documents were sent and therefore does not meet the requirements of the Direct Request process.

There were only two pages of the tenancy agreement provided with this application. The page displaying the subject of security deposit and the signatures of the parties was not provided. Therefore this does not meet the requirements of the Direct Request process.

Conclusion

I HEREBY ORDER the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated August 6, 2010, is void and is without force or effect.

I HEREBY DISMISS the Landlord's application, without 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: August 27, 2010.

Dispute Resolution Officer