

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 August 17, 2010, at 9:45 p.m. the Landlord served the Tenant with the Notice of Direct Request Proceeding, in person at the rental unit. Based on the written submissions of the Landlord, I find that the Tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

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
- A copy of a tenancy agreement signed by the Landlord and Tenant on May 17, 2010, for a fixed term tenancy beginning May 1, 2010 which ends on February 28, 2011, at which time the Tenant is required to vacate the rental unit. Rent is payable on the first of each month in the amount of \$2,000.00, and a security deposit of \$1,000.00 was paid on June 1, 2010; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, July 11, 2010, with an effective vacancy date of July 22, 2010 due to \$2,000.00 in unpaid rent which was due on July 1, 2010; and

- And a note on the Landlord's application that states the Tenant made a payment on August 4, 2010, which paid July 2010 rent in full plus \$300.00 towards the August 2010 rent.

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 sent to the Tenant registered mail on July 12, 2010.

Analysis

The Landlord has provided a copy of the 10 Day Notice to End Tenancy which was issued on July 11, 2010 with an effective date of July 22, 2010. A Notice to End Tenancy can be waived and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when a landlord has accepted rent from a tenant after the Notice to End Tenancy has been served. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End Tenancy, no question of "waiver" can arise as the landlord is entitled to that rent.

In these circumstances the Landlord was able to accept rent for the period up to July 22, 2010 without waiving the 10 Day Notice to End Tenancy. If the landlord accepts rent for the period after the effective date of the Notice to End Tenancy, the intention of the parties will be in issue. In this case, the Landlord accepted rent of \$2300.00 on August 4, 2010. This amount exceeds the amount that was due by July 22, 2010 and includes \$300.00 towards August 2010 rent. Therefore the 10 Day Notice to End tenancy issued July 11, 2010 is waived which renders it void. Based on the aforementioned I hereby dismiss the Landlord's application.

The Landlord is at liberty to issue a 10 Day Notice to End Tenancy for amounts remaining to be unpaid for August 2010. If payment is then received after the effective date of any new notice, the Landlord may issue a receipt for the payment which includes the words "use and occupancy only" which clearly states the Landlord's position and prevents a waiver of the 10 Day Notice.

When creating a Notice to End Tenancy the Landlord is required to list the Tenant's "address for service of documents or notices – where material will be given personally, left for, faxed, or mailed" and therefore a PO Box number cannot be considered as a complete address. The address must include the civic address.

Conclusion

The 10 Day Notice to End Tenancy issued July 11, 2010, is hereby cancelled and is of no 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: September 01, 2010.

Dispute Resolution Officer