



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 (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. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 16, 2010 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

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

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on May 6, 2010 for a 1 year fixed term tenancy beginning on June 1, 2010 for the monthly rent of \$1,200.00 due on the 1st of the month and a security deposit of \$600.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 2, 2010 with an effective vacancy date of September 12, 2010 due to \$1,225.00 in unpaid rent and \$25.00 in unpaid utilities.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of September 2010 and an unexplained additional \$25.00 and \$25.00 for utilities that the landlord gave a written demand for on September 2, 2010

and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on September 2, 2010 at 1:00 p.m. The landlord has provided confirmation that this service was witness by a third party.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and find the landlord has issued a 10 Day Notice to End Tenancy for Unpaid Rent for an amount of rent that is not justified by the tenancy agreement or any submitted documentation and for utilities that he only provided the tenant with a written demand for on September 2, 2010.

Section 46 stipulates a landlord may issue a notice to end tenancy if the rent is unpaid on any day after it is due and if the tenancy agreement requires the tenant to pay utility charges to the landlord and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them.

I find no reference in the tenancy agreement that the tenant is to pay the landlord any utilities and the landlord has not provided a copy of the letter of demand he states he served the tenant on September 2, 2010. Even if the letter had been included, I find the notice to end tenancy is ineffective.

Conclusion

Based on the reasons noted above, I dismiss the landlord's application in its entirety.

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 24, 2010.

Dispute Resolution Officer