

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 September 22, 2010, the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipts were submitted in the Landlord's evidence. 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 entitled to an Order of Possession and a Monetary Order pursuant to 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;
- A copy of a residential tenancy agreement which was signed by all parties on April 14, 2010, for a fixed term tenancy beginning May 1, 2010 and would switch to a month to month tenancy after October 31, 2010. The monthly rent of \$865.00 is due on or before the first of each month and a deposit of \$432.50 was paid on April 14, 2010; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, August 5, 2010 with an effective vacancy date of August 16, 2010 due to \$955.00 in unpaid rent.
- A notation made by the Landlord indicating the \$955.00 amount listed on the 10 Day Notice includes \$65.00 owing from July 2010 rent, \$865.00 owing for August 2010 rent, plus a \$25.00 NSF charge.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid when it was posted to the Tenant's door on July 1, 2010 at 9:30 p.m. in the presence of a witness.

Analysis

The Landlord filed their application on September 21, 2010 seeking an Order of Possession and a Monetary Order for rent that was unpaid from July, 2010, and August 2010. There is no evidence to indicate whether a payment for rent had been accepted for September 2010 or if the rent for September 2010 remains unpaid. If a payment was accepted by the Landlord after issuing the 10 Day Notice there is a possibility that the Notice was waived and the tenancy reinstated.

Based on the aforementioned, there is insufficient evidence to support if a waiver of the Notice has occurred therefore this application does not meet the requirements of the Direct Request processes and is hereby dismissed with leave to reapply.

Conclusion

The Landlord's application is hereby 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: September 30, 2010.

Dispute Resolution Officer