

DECISION

Dispute Codes: OPR

Introduction

This application was originally submitted on August 17, 2010 for a Direct Request proceeding in which the landlord was seeking an Order of Possession only, pursuant to a 10-day Notice to End Tenancy for \$525.00 in unpaid rent, dated August 5, 2010. The Notice had been served on the tenant by posting it on the door on the August 5, 2010. On August 27, 2010 a determination on the direct request application was rendered and the matter ordered to be reconvened to a participatory hearing on October 12, 2010.

After the decision to reconvene was rendered and prior to the hearing date, the landlord submitted an amended application seeking to also include a monetary claim for \$525.00 rent owed for the latter half of August 2010, \$1050.00 rent owed for September 2010 and \$1050.00 rent owed for October 2010, for a total monetary claim of \$2,625.00.

Despite being served with the Notice of hearing and the amended application sent by registered mail, the tenant did not appear.

Preliminary Matter

The landlord testified that once the matter was adjourned, the landlord decided to amend the application for the order of possession to include a monetary claim for current and future rent owed in the amount of \$2,625.00, in addition to the request for an order of possession.

The amendment was issued dated September 8, 2010 and according to the landlord's evidence, was sent to the tenant by registered mail on September 9, 2010.

While this application for an Order of Possession was brought forth under section 55 of the Act, I find that an application for monetary compensation would be covered by section 67 of the Act and constitutes a completely different claim than seeking an order of possession under section 47 and 55 of the Act.

Rule 2.5 of the *Residential Tenancy Rules of Procedure* does permit amending an application but imposes the following criteria:

- The applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. If applications have not been served on any respondents, the applicant must submit an amended copy to the Residential Tenancy Branch and serve the amended application.
- The application will not be amended where it would result in prejudice to the other party. If the amendment is allowed, the arbitrator may adjourn the hearing to allow the respondent time to respond to the amended application.

In this instance I find that the landlord's amended application was completed after the initial consideration and decision had been rendered through the Direct Request Proceeding on August 27, 2010 had already occurred. It was established that the revised application was not submitted nor served until September 9, 2010, which fell *after* hearing on the landlord's application was already in process. I find that, under the Rules of Procedure an applicant is only at liberty to amend the application without consent provided this is done prior to the commencement of the proceedings.

Since the matter had been considered and adjourned to be continued through a participatory hearing dealing specifically with the original application, it was therefore not possible to amend the application to add an additional claim under another section of the Act in the midst of these proceedings.

Issue(s) to be Decided

The issue to be determined based on the testimony and the evidence is whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated August 5, 2010 with effective date of August 15, 2010, and a copy of the tenancy agreement. The landlord testified that the tenancy began on June 16, 2010, at which time the tenant paid a security deposit of \$425.00 and Pet Damage Deposit of \$400.00. The landlord testified that the tenant failed to pay rent for the month August 2010. The landlord testified that the tenant appeared to have the unit but the landlord has requested an Order of Possession.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant did not pay the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5)

of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective immediately. This order must be served on the Respondent and may be filed in the Supreme Court 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: October 2010.

Dispute Resolution Officer