

DECISION

Dispute Codes – OPR, MNR

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 22, 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 April 10, 2008 for a 1 year fixed term tenancy beginning on May 1, 2008 for the monthly rent of \$1,300.00 due on the 1st of the month and a security deposit of \$650.00 and a pet damage deposit of \$500.00 was paid. The tenancy agreement stipulates the tenant must move out of the rental unit at the end of the fixed term;
- A copy of the first page of a tenancy agreement unsigned by either party for a 1 year fixed term tenancy beginning on May 1, 2009 and ending on April 30, 2010 stipulating that the tenant must move out of the rental unit at the end of the fixed term; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 9, 2010 with an effective vacancy date of September 19, 2010 due to \$953.76 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of September 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 9, 2010 at 11:00 a.m. and that this service was witnessed 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

The landlord has submitted a signed tenancy agreement that stipulates the tenant must move out of the rental unit at the end of the fixed term tenancy by April 30, 2009. The landlord has also submitted a first page of what might be an updated tenancy agreement but it is neither initialed nor signed by either party.

Even if the updated document were signed it shows an end date of the fixed term to be April 30, 2010 and it also stipulates the tenant must move at the end of that fixed term. As the landlord has submitted no evidence to establish what the current terms of the tenancy are and since the Direct Request process does not include a participatory hearing I cannot determine the current terms of the tenancy.

Conclusion

Based on the findings above, I dismiss the landlord's application, in its entirety, 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: October 05, 2010.

Dispute Resolution Officer