

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 dated September 30, 2010 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 October 5, 2010 the landlord served the tenant and another person 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 and an additional person have 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 *Residential Tenancy Act (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 and another person;
- A copy of a residential tenancy agreement which was signed by the parties on November 6, 2003 for a month to month tenancy beginning on December 1, 2003 for the monthly rent of \$1,100.00 due on the 1st of the month and a security deposit of \$550.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 17, 2010 with an effective vacancy date of September 27, 2010 due to \$5,750.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the months of January, April, May, August and September 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by registered mail on September 17, 2010.

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 filed the Application for Dispute Resolution on September 30, 2010 but did not serve the tenant until October 5, 2010 with the notice of hearing documents. Section 59 of the Act requires the applicant to serve the respondent with the notice of proceeding documents within 3 days of making the Application for Dispute Resolution.

The landlord has named a second person as being a tenant but has provided no documentation showing when this new tenant was added to and agreed to the terms of the tenancy agreement.

The 10 Day Notice to End Tenancy for Unpaid Rent issued on September 17, 2010 indicates the tenant owes rent for January, April, May, August and September 2010 in the amount of \$5,750.00 but has only requested a monetary order in the amount of \$4,600.00 for rent owed for April, May, August, and September 2010. The landlord has provided no explanation for this discrepancy.

The landlord has submitted a tenancy agreement that states that rent is \$1,100.00 and yet in the Application for Dispute Resolution and based on the calculated rent due it appears that rent is in the amount of \$1,150.00 per month. The landlord has failed to provide any documentation that imposes a rent increase that is in accordance with Part 3 of the *Act*.

Conclusion

For the reasons noted above, I dismiss the landlord's application 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 20, 2010.

Dispute Resolution Officer