



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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 October 15, 2010 the landlord served the male 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 male tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

The landlord has provided no evidence indicating the female tenant was served with the notice of this proceeding. As such, I find the female tenant has not been served with the notice of this proceeding and I amend the landlord's application to exclude the female tenant as a respondent.

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 male tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the female tenant on July 7, 2010 for a month to month tenancy beginning on July 1, 2010 for the monthly rent of \$500.00 for the months of May to August and \$650.00 for the months of September to April due on the 31st of the month and a security deposit of \$250.00 was paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 20, 2010 with an effective vacancy date of September 30, 2010 due to \$650.00 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 by registered mail on September 28, 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

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on October 3, 2010 and the effective date of the notice is amended to October 13, 2010, pursuant to Section 53 of the *Act*.

Section 43 of the *Act* stipulates a landlord must not impose a rent increase for at least 12 months after the date on which the tenant's rent was first established under the tenancy agreement. As the rent amount was first established as \$500.00 on July 1, 2010 the rent amount due for September 2010 must be \$500.00.

Despite the amounts listed in the tenancy agreement, none of which have been initialed by the parties, the landlord has issued a 10 Day Notice to End Tenancy for Unpaid Rent for an amount the landlord is not entitled to collect as rent.

In addition, as I have noted above that it was necessary to amend the landlord's application to exclude the female tenant from this application, I note that the male tenant has not signed the tenancy agreement and is therefore not a tenant but is an occupant.

Conclusion

For 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: October 22, 2010.

Dispute Resolution Officer