



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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 October 22, 2010, at 2:00 p.m. the Landlord served the female Tenant with the Notice of Direct Request Proceeding in person and on October 24, 2010 the Landlord served the male Tenant via registered mail. A Canada Post receipt was provided in the Landlord's evidence. Based on the written submissions of the Landlord I find that each Tenant has been served with the Notice of Direct Request Proceeding.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession and a Monetary Order under 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 each Tenant; and
- A copy of the tenancy agreement which was signed by all parties on August 23, **2011**, for a fixed term tenancy effective September 1, 2010, which is set to switch to a month to month tenancy after August 21, 2011, for rent payable in advance of the first of each month in the amount of \$1,300.00; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, October 8, 2010, with an effective vacancy date of October 18, 2010 due to \$1,375.00 in unpaid rent which was due on October 1, 2010; and
- A notation on the Landlord's application that he is seeking \$1,300.00 and that the Tenants owe \$50.00 for parking, \$25.00 for late charges for a total \$1,375.00 as listed on the Notice; and

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on October 10, 2010 at 15:00 hrs when it was posted to the Tenant's door, in the presence of a witness.

Analysis

The Landlord has provided a copy of the 10 Day Notice to End Tenancy which was issued on October 8, 2010, which in the section "you have failed to pay rent in the amount of \$1,375.00 that was due on 01/10/2010 (Day Month Year)". The Landlord is seeking to end the tenancy due to this breach; however, the landlord has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy which meets the form, content, and service under sections 52 and 89 of the *Residential Tenancy Act*.

In this case I find that the 10 Day Notice issued by the Landlord does not meet the requirements of the Act as the Notice was issued listing "rent" of \$1,375.00 was due on October 1, 2010 and is now past due. The evidence supports rent is only \$1,300.00 and therefore if the October 1 2010 rent is unpaid, the Notice should display this amount and not \$1,375.00. Late fees and parking fees, while they may be payable pursuant to the tenancy agreement and/or the Act, they are not rent and cannot be listed on the 10 Day Notice as being late. These fees do not become payable until the rent is late and therefore do not become payable in this case until the second of the month.

In addition the date listed on the tenancy agreement indicates the parties signed the agreement on August 23, 2011, a date that has not yet arrived.

As per the aforementioned I find the 10 Day Notice to End Tenancy for Unpaid rent is invalid and is of no force or effect. Having found the 10 Day Notice issued October 8, 2010, to be invalid; I hereby dismiss the Landlord's application, without leave to reapply.

Conclusion

I HEREBY ORDER the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated October 8, 2010, is void and is without force or effect.

I HEREBY DISMISS the Landlord's application, without 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: November 01, 2010.

Dispute Resolution Officer