



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 Landlords for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 22, 2010, the Landlord served Tenant (1) and Tenant (2) with the Notice of Direct Request Proceeding via registered mail. Canada Post receipts were submitted in the Landlords' evidence. Based on the written submissions of the Landlords, I find that Tenant (1) and Tenant (2) have been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlords:

- A copy of the Proof of Service of the Notice of Direct Proceeding for Tenant (1) and Tenant (2);
- A copy of a residential tenancy agreement which was signed by the Landlord , Tenant (1), and two other adults not named in this application on March 16, 2010, for a month to month tenancy beginning April 1, 2010, for the monthly rent of \$750.00 due on 1st of the month and a deposit of \$375.00 was paid; and
- A letter of authorization appointing the applicant to act as an Agent for the Landlord; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, October 2, 2010 with an effective vacancy date of October 17, 2010 due to \$500.00 in unpaid rent; and
- The Landlord's application for \$375.00 in the balance due of unpaid rent.

Documentary evidence filed by the Landlords indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent on October 7, 2010 at 1511 hrs. when it was served personally to Tenant (1) at the rental unit in the presence of a witness.

Analysis

I have reviewed all documentary evidence and note that the tenancy agreement was signed by Tenant (1) and neither Tenant (2) or Tenant (3) are listed on the tenancy nor have they signed the agreement; therefore I find the Landlord's application through the Direct Request process may only proceed against Tenant (1), who signed the tenancy agreement and who is listed as a tenant on the agreement.

As per the aforementioned I find the Landlords' application against the second and third named Tenants, who are not listed on the tenancy agreement and who did not sign the tenancy agreement, is dismissed without leave to reapply.

Order of Possession - I have reviewed all documentary evidence and accept that Tenant (1) has been served with notice to end tenancy as declared by the Landlords. The notice is deemed to have been received by Tenant (1) on October 7, 2010, and the effective date of the notice is October 17, 2010, pursuant to section 90 of the *Act*. I accept the evidence before me that Tenant (1) has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that Tenant (1) is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice and I hereby grant the Landlord an Order of Possession.

Monetary Order – The evidence supports that Tenant (1) has failed to pay the October 1, 2010 rent in full, in violation of section 26 of the *Act* which provides that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I approve the Landlords' request for a Monetary Order as follows:

Unpaid Rent which was due October 1, 2010	\$375.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$375.00

Any deposits currently held in trust by the Landlords are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND that the Landlords are entitled to an Order of Possession effective **two days after service on Tenant (1)**. This order must be served on the Respondent Tenant (1) and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlords' monetary claim. A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$375.00**. The order must be served on the respondent Tenant (1) and is enforceable through the Provincial Court 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: November 01, 2010.

Dispute Resolution Officer