



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 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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 19, 2010 the landlord served the tenants with the Notice of Direct Request Proceeding by hand.

Based on the written submissions of the landlord, I find that the tenant named on the tenancy agreement and the other occupant has been served with the Dispute Resolution Direct Request Proceeding documents.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for the tenant and occupant;
- A copy of a residential tenancy agreement which was signed by the landlord and the female tenant on August 30, 2010 for a tenancy beginning September 15, 2010 for the monthly rent of \$1,375.00 due on the 1st of the month; and



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- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, November 02, 2010 with an effective vacancy date of November 12, 2010 due to \$1,375.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant and occupant have failed to pay the full rent owed for the month of November, 2010 and that the tenant and occupant were served a 10 Day Notice to End Tenancy for Unpaid Rent which was posted on the door of the tenants rental unit on November 02, 2010 and therefore is deemed served three days later.

The Notice states that the tenant and occupant 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 find only the female tenant is listed as a tenant on the tenancy agreement. Therefore, the other tenant named in this application is not legally a tenant but an occupant allowed to reside on the premises by the tenant and therefore has no rights or obligations under the tenancy agreement as stated in the Residential Tenancy Policy Guidelines #13. Therefore, I find that the request for a Monetary Order against both of the tenants must be amended to include only the female tenant. I do accept that the female tenant has have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on November 05, 2010 and the effective date of the notice is amended to November 15, 2010 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.



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Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

I find that the landlord is entitled to an Order of Possession pursuant to section 55 effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to section 67 in the amount of **\$1,375.00** comprised for rent owed. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced 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 30, 2010.

Dispute Resolution Officer