



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 February 2, 2011, the Landlord (listed as the company name) served each Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipts were submitted in the Landlord's evidence. Based on the written submissions of the Landlord, I find that each Tenant has been served with the Dispute Resolution Direct Request Proceeding documents in accordance with the Act.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach?

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;
- A copy of a residential tenancy agreement which was signed by all parties on October 23, 2009 for a fixed term tenancy agreement effective November 1, 2009 which switched to a month to month tenancy after April 30, 2010. The

monthly rent of \$950.00 is due on first day of the month and a deposit of \$475.00 was paid on October 23, 2009; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 7, 2011, with an effective vacancy date of January 22, 2011 due to \$3,315.00 in unpaid rent.
- A copy of the tenant ledger which indicates the \$3,315.00 is comprised of unpaid rent \$3,215.00 and late payment fees of \$100.00 (4 months x \$25.00)
- Documentary evidence filed by the Landlord indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid when it was sent registered mail on January 7, 2011. Canada Post receipts and proof of service documents were provided in the Landlord's evidence.

Analysis

Proof of Service – The proof of service document for the Notice of Direct Request was completed listing the Landlord's company name after the word "I" and before the word served and the form was signed with a signature that cannot be interpreted. The proof of service form is a declaration made by the "person" who conducted the service and that person is required to complete and sign the document using their first and last name printed clearly on the document. In this situation the signature of the person who conducted the service was the same as the signature on the 10 Day Notice with her name printed clearly. Therefore I can determine who conducted the service in this case. That being said, I caution the Agent to ensure that their full legal name is printed clearly as the Landlord/Agent who served the document(s), in place of where the company's name is currently listed.

Order of Possession - I have reviewed all documentary evidence and accept that the Tenants have been served with notice to end tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenants on January 12, 2011, five days after it was mailed, and the effective date of the notice is January 22, 2011, pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenants have 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 the Tenants are 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 the Tenants have accumulated an amount of unpaid rent and late payment fees, 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 Landlord's request for a Monetary Order for the amount of outstanding rent of **\$3,215.00** (\$3,315.00 - \$100.00). The amount of the monetary order was reduced by the four late payment fees (4 x \$25.00) as the Direct Request Process is convened under section 55(4) of the Act which provides for orders relating to non-payment of rent. Late payment fees are not considered rent under the Act therefore the application for these amounts is dismissed with leave to reapply.

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

Conclusion

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

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$3,215.00**. The order must be served on the respondent Tenants 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: February 10, 2011.

Residential Tenancy Branch