



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD

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. As well, the landlord applied to retain the tenant's security deposit.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 21, 2011 the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail. Pursuant to section 90(a) of the Residential Tenancy Act I deem the tenant to have been served 5 days after the registered mail notice was mailed or on February 26, 2011.

Based on the written submissions of the landlord, I find that the tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent, a monetary Order for unpaid rent and can the landlord retain the tenant's security deposit, pursuant to sections 55 and 67 of the *Residential Tenancy Act (Act)*. I have reviewed all documentary evidence.

Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a copy of the Application for Dispute Resolution which provided that the Notice to End Tenancy was served by personal delivery to the tenant at the rental unit on February 3, 2011 at 4:00 p.m. The Proof of Service was acknowledged by the Tenant.

The purpose of serving documents under the *Act* is to notify the persons being served of their breach and notification them of their rights under the *Act* in response. The

landlord is seeking to end the tenancy due to this breach; however, the landlord has the burden of proving that all the tenants were served with the 10 day Notice to End Tenancy.

Analysis

From the application and evidence provided by the Landlord it is apparent that the Landlord has requested to retain the Tenant's security deposit in partial payment of the unpaid rent. The Direct Request procedure does not allow for the Landlord to apply to retain the Tenant's security deposit as stated in the Direct Request fact sheet number RTB -130. If a Landlord is requesting to retain the Tenant's security deposit then the Landlord must apply through the participatory hearing procedure. Consequently I find the application does not comply with the Direct Request procedure and I dismiss it with leave to reapply.

Conclusion

Having found that the Landlord's application does not comply with the Direct Request procedure, I order that the Direct Request Proceeding Application is dismissed with 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*.

Residential Tenancy Branch