



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the landlords for an Order of Possession 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 April 11, 2011, the landlords served the tenant with the Notice of Direct Request Proceeding via personal service.

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

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 46, 55 and 67 of the Act.

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on March 21, 2011, indicating a monthly rent of \$1,850.00 due on the first day of the month, beginning April 1, 2011;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 2, 2011, with a stated effective vacancy date of April 11, 2011, for \$2,491.67

in unpaid rent. Under the Act, the Notice self corrects to April 12, 2011, for an effective vacancy date; and

- A cheque issued by the tenant, which was apparently returned as NSF.

Documentary evidence filed by the landlords indicates that the tenant had failed to pay all rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery on April 2, 2011.

The Notice states that the tenant had five days to pay the rent in full 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 from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord.

The Landlord has provided a copy of the 10 Day Notice to End Tenancy which was issued on April 2, 2011, and states “you have failed to pay rent in the amount of \$2,491.67 that was due on April 1, 2011,” and a separate, handwritten statement indicating that \$661.67 of the unpaid rent was for ten days in March 2011.

In the tenancy agreement supplied by the landlords and signed by the parties, the tenant was obligated to pay rent of \$1,850.00, beginning April 1, 2011. There is no signed document which the tenant acknowledges owing for ten days of rent in March 2011.

Further, the name on the 10 Day Notice has the name of the tenant incorrectly spelled.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The landlords are seeking to end the tenancy due to this breach; however, the landlords have 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*.

I find that the 10 Day Notice issued by the landlord does not meet the requirements of the Act as the only amount of rent the tenant could owe under the tenancy agreement or any documents submitted by the landlords was \$1,850.00. Therefore the Notice is not enforceable as the rent listed as being due is invalid.

Further the tenant's name was incorrectly spelled.

Based on the above I find that this application does not meet the requirements for the Direct Request process and I hereby dismiss the landlords' application without leave to reapply.

Conclusion

I HEREBY ORDER that the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated April 2, 2011, is without force or effect.

I HEREBY DISMISS the landlords' application, without leave to reapply.

The landlords are at liberty to issue another 10 Day Notice to End Tenancy for Unpaid Rent to the tenant, with a request for a conference call hearing for the purpose of proving that the tenant was obligated to pay additional rent other than the amount listed in their evidence.

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: April 26, 2011.

Residential Tenancy Branch