



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DIRECT REQUEST DECISION

Dispute Codes : OPR, MNR

Introduction

The 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 and a monetary order for rental arrears.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 17 2011 at 14:10, the landlord served the tenant with the Notice of Direct request in person.

Based on the written submissions of the landlord, I find the tenant has been duly 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 and a monetary Order for rental arrears pursuant to 55 and 67 of the *Residential Tenancy Act (the Act)*. I have reviewed all documentary evidence.

Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a copy of the Notice to End Tenancy for Unpaid Rent indicating that the tenant was in arrears for 986.61 and a "Proof of Service" form stating that the Notice was served in person to the tenant on April 6, 2011 at 2:00 p.m. in front of a witness.

The purpose of serving documents under the *Act* is to notify the person of a failure to comply with the Act and of their rights in response. The landlord, seeking to end the tenancy has the burden of proving that the tenant was served with the Notice to End Tenancy and I find that the landlord has met this burden.

Analysis

Submitted into evidence was a copy of the tenancy agreement signed on February 15, 2011 showing rent set at \$675.00 per month. However, the landlord indicated in the Application for Direct Request that the tenant was in arrears for \$945.00 for the month

of April 2011 and the Ten Day Notice to End Tenancy for Unpaid Rent indicated that the tenant was in arrears for \$986.61 for unpaid rent. As I am unable to determine the details of the monetary claim and what the arrears represent, I find that the monetary claim cannot proceed through the direct request process, given that there is no way to take testimony to clarify the amount. Accordingly, I dismiss the landlord's monetary claim.

I do accept that rent was owed and based on the written testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. I find that the tenant has not paid all of the outstanding arrears and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Given the above facts I find that the landlord is entitled to an Order of Possession.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby dismiss the remainder of the application without 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*.

Dated: April 20, 2011.

Residential Tenancy Branch