



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes – OPR, MNR, MNDC, FF

Introduction

This hearing 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 confirmation that on March 21, 2011 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

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

The landlord testified that she has confirmed as of April 2, 2011 the tenant had vacated the rental unit. As such, the landlord indicated there is no longer a need for an order of possession and I amend the landlord's Application to exclude the matter of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and late fees; for lost revenue and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on September 16, 2010 for a 1 year fixed term tenancy beginning on October 1, 2010 for the monthly rent of \$975.00 due on the 1st of each month and a security deposit of \$487.50 was paid. The tenancy agreement contains a clause allowing the landlord to charge a fee of \$20.00 for late payment of rent; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on March 2, 2011 with an effective vacancy date of March 12, 2011 due to \$995.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the months of March and April 2011 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on March 2, 2011 and that this service was witnessed by a third party.

The Notice states that the tenant 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.

The landlord testified she last spoke with the tenants around March 20, 2011 at which time she was not sure if the tenants were going to move out or not. She further stated that when she had heard nothing from the tenants regarding when they would move out she posted a 24 hour notice and entered the rental unit on April 2, 2011 and found the tenant had vacated.

Analysis

In the absence of any testimony or evidence from the tenant, I accept the tenant failed to pay rent for the month of March 2011 and find the landlord is entitled to this rent amount plus the late fee as provided for in the tenancy agreement.

As to the landlord's request for compensation for lost revenue for the month of April 2011, I accept the effective date of the 10 Day Notice to End Tenancy for Unpaid Rent as March 12, 2011 and the last time the landlord spoke to the tenant was on March 20, 2011. As per the landlord's testimony I accept the rental unit was not checked until after April 1, 2011 to determine if the tenant had vacated it prior to that date.

As a result, I find the landlord failed to meet their obligations under Section 7 of the *Act* that state a landlord who claims compensation for damage or loss that results from the tenant's non-compliance of the *Act*, regulation or tenancy agreement must do whatever is reasonable to minimize the damages or losses, in that the landlord failed to determine if the rental unit was available to be rented to a new tenant before April 1, 2011. For this reason, I dismiss this portion of the landlord's Application.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,045.00** comprised of \$975.00 rent owed; \$20.00 late fee and the \$50.00 fee paid by the landlord for this application.

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: April 07, 2011.

Residential Tenancy Branch