



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

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 due to unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 13, 2011, the Landlord served the Tenant with the Notice of Direct Request Proceeding via personal delivery. 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 issue to be decided is whether the Landlord is entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the Residential Tenancy Act (the "Act").

Background and Evidence

The Landlord 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 December 21, 2007 for the monthly rent of \$550.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, April 5, 2011, with an effective vacancy date of April 15, 2011, due to \$613.00 in unpaid rent; and
- A receipt entitled "For Use and Occupancy Only" for the amount of \$613.00, dated April 22, 2011.

Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent via personal delivery on April 5, 2011, in the presence of a witness.

The written submission of the Landlord indicated that the Tenant paid the rent after delivery of the 10 Day Notice, but the cheque was returned NSF. However, according to the Landlord, the Tenant finally paid the full amount of April 22, 2011, at which time the receipt as noted above was issued.

The Landlord is requesting an order of possession only through this Direct Request process.

Analysis

I have reviewed all documentary evidence and accept that the Tenant has been served with a 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 5, 2011 and states "you have failed to pay rent in the amount of \$613.00 that was due on April 1, 2011. "

Under the tenancy agreement, the monthly rent was \$550.00 and the Landlord failed to provide evidence to substantiate that the monthly rent had increased to \$613.00.

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 Landlord is seeking to end the tenancy due to this breach; however, the Landlord has 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 Landlord has failed to substantiate that the Tenant's monthly rent had increased to \$613.00. Therefore the Notice is not enforceable as I am unable to substantiate the amount of rent listed is the amount due.

Conclusion

Based on the above I find that this application does not meet the requirements for the Direct Request process and I hereby **dismiss** the Landlord's application.

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: July 04, 2011.

Residential Tenancy Branch