



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 July 22, 2011, the landlord served each tenant with the Notice of Direct request by registered mail. Registered mail is deemed to be served in five days.

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 and a "Proof of Service" form stating that the Notice was served to the tenant by registered mail sent on May 19, 2011.

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 September 15, 2010 showing rent set at \$2,600.00 per month. No copy of the tenant's rent account ledger was submitted. However in the Application for Direct Request submitted on July 19, 2011 the landlord indicated that the tenant was in arrears for \$2,600.00. The Ten Day Notice to End Tenancy for Unpaid Rent dated May 19, 2011 indicates that the

tenant owed \$2,600.00 due on May 1, 2011. It is not clear whether or not any portion of the May arrears were paid nor whether the additional rent owed for the month of June or July 2011 was paid. In the "*Details of the Dispute*" section on the application the landlord indicated that there have been fines imposed by the strata council.

Given the absence of the tenant's ledger, and although I accept that the tenant is in arrears for rent, I find that I am unable to determine what the amount being claimed pertains to. Therefore I find it necessary to dismiss the landlord's monetary claim, but do so with leave to reapply. The landlord is at liberty to file an application seeking rent or other damages including reimbursement for the fines.

Based on the evidence submitted by the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid all of the outstanding rent 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.

The remainder of the 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*.

Dated: August 09, 2011.

Residential Tenancy Branch