

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 based on unpaid rent and a monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declared that on October 12, 2011, Landlord WS handed the tenant the Notice of Direct Request Proceeding.

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

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 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 served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on January 1, 2011, indicating a monthly rent of \$1,400.00 due on the 1st day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) handed to the tenant on October 5, 2011 with a stated effective vacancy date of October 16, 2011, for \$1,330.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords stating that the tenants failed to pay all outstanding rent was served by handing the 10 Day Notice to the tenant at 8:30 p.m. on October 5, 2011. In accordance with section 88 of the *Act*, the tenant was served with this 10 Day Notice on October 5, 2011.

The Notice states that the tenant had five days from the date of service 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 landlords. The landlords' written evidence stated that the Proof of Service of the Notice of Direct Request document was handed to the tenant on October 12, 2011.

I find that the only written evidence the landlords have provided with respect to their application for a monetary award of \$1,330.00 is the statement in their application for dispute resolution indicating that the tenant has not paid his October rent of \$1,330.00. This is not the monthly rent as set out in the Residential Tenancy Agreement entered into written evidence by the landlords. Another unusual feature of this application is that the Residential Tenancy Agreement signed on January 1, 2011 shows that the tenancy commenced on January 1, 2010 and was to end on December 31, 2011.

I find that the landlords have not met the onus placed on them of supplying documents that would prove the amount of rent owing (e.g., rent ledger, receipt book) in support of their application for a monetary award. I find that I am unable to consider their application for a monetary award against the tenants by way of a Direct Request proceeding.

As I find that the landlords have not provided sufficient evidence to demonstrate that rent was owing, I am unable to consider in a Direct Request proceeding that the tenant has accepted that the tenancy ended on the effective date of the 10 Day Notice because of unpaid rent.

Under these circumstances, I adjourn this application to be reconvened as a participatory hearing.

Conclusion

I adjourn the landlords' direct request application for an Order of Possession and a monetary Order to be reconvened at a participatory hearing. 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*.