



Dispute Resolution Services

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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 and \$472.00 for unpaid utility accounts.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 12, 2011, 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.

Preliminary Matter

In regard to the landlord's claim for utility arrears, I find that this is a matter that cannot be determined through the direct request process. An application under section 55(4) can only pertain to an Order of Possession and actual rent owed, and does not permit a monetary order for other damages or enforcement of any other provisions of the Act or tenancy agreement. Therefore, I decline to consider the utility issue. The landlord is at liberty to make an application for a participatory hearing to deal with this matter or any other monetary loss..

Issue(s) to be Decided

The remaining 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 written testimony that the tenant had paid the rent with a cheque that had "bounced". According to the landlord, on October 7, 2011 the parties had further discussions with respect to the tenant's promise to pay the rent in cash, but the debt was never resolved and the tenant then avoided contact with the landlord.

The landlord submitted a copy of the dishonoured cheque received from the tenant dated October 1, 2011 and a document from the bank dated October 4, 2011 verifying that the cheque had failed to clear.

The landlord submitted a copy of the Notice to End Tenancy for Unpaid Rent dated October 2, 2011 and a "Proof of Service" form stating that the Notice was served to the tenant by posting it on the door on October 2, 2011, 2011 at 12:30 p.m. in front of a witness.

Also submitted into evidence was a copy of the tenancy agreement signed on October 24, 2009, copies of utility bills and copies of letters demanding payment for the outstanding utilities.

Analysis

The landlord had indicated that the tenant owed \$1,100.00 rent for the month of October and I accept that this rent was not paid.

However, I find that there are questions with respect to the issuing and service of the Ten Day Notice to End Tenancy for Unpaid Rent.

I find that the official bank notification stating the tenant's cheque failed to clear was dated November 4, 2011. Given this information, I find that it would be unlikely that service of the Ten-Day Notice to End Tenancy for Unpaid Rent in response to the notice of deficiency could have occurred on October 2, 2011 as indicated by landlord.

Because of the questions that arose with this application, which cannot be answered, nor clarified adequately, in an ex-parte proceeding such as the Direct Request Process, I find that the application must be dismissed and I do so with leave for the landlord to reapply to have the matter heard and determined through a regular participatory hearing.

Conclusion

Based on the evidence, I hereby dismiss the landlord's application 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: October 17, 2011.

Residential Tenancy Branch