



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 landlord for an Order of Possession and a monetary order for unpaid rent.

The landlord submitted signed Proofs of Service of the Notice of Direct Request Proceeding; they declared that on October 13, 2011, the landlord separately served each tenant with the Notice of Direct Request Proceeding personally serving each of them.

Pursuant to Section 90 of the *Residential Tenancy Act* a document served in this manner is deemed to have been served five days later.

Based on the written submissions of the landlord, I find that the tenants have been duly served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary order for unpaid rent and if so, in what amount?

Background and Evidence

The landlord submitted the following documents:

- Copies of the Proofs 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 March 21, 2001, providing for a monthly rent of \$1,550.00 due on the first day of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 5, 2011 with a stated effective vacancy date of October 15, 2011, for \$1,610.00 in unpaid rent;

- Copies of two notices of rent increase, the first dated January 28, 2010 raising the rent to \$1,580.00 per month and the second, dated January 27, 2011 raising the rent to \$1,610.00 per month.

The notices of rent increase were not in the approved form as required by the *Residential Tenancy Act*.

Analysis and conclusion

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord.

The landlord prepared its own form of notice of rent increase. The notices given by the landlord were not in the approved form as required by section 42(3) of the *Residential Tenancy Act* and they did not set out the information for landlords and tenants that is included as part of the approved form. Because the landlord's rent increases did not comply with the Act, I find that they amounted to illegal rent increases.

Because the amount that the tenants should pay for rent is uncertain and there have been overpayments of rent due to the unlawful rent increases, I am unable to determine the amount outstanding for rent on this application. I find that the landlord has failed to prove on a balance of probabilities that he is entitled to a monetary order or an order for possession. The application is therefore dismissed.

If the landlord wishes to make another application for dispute resolution with respect to this tenancy it will have to serve a new Notice to End Tenancy and the matter should not proceed by direct request.

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 26, 2011.

Residential Tenancy Branch