



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

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 for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 21, 2011 the Landlord served each Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipts were submitted in the Landlord's evidence. Based on the written submissions of the Landlord, I find that each Tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlords:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant;
- A copy of a residential tenancy agreement which was signed by all parties for a month to month tenancy that began on January 28, 2011, for the monthly rent of \$650.00 due on 1st of the month and a deposit of \$325.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, November 2, 2011 due to \$700.00 in unpaid rent for November 2011; and
- A copy of the tenant's ledger which indicates the Landlord named in this proceeding began to manage this property as of 8/31/2011.

Documentary evidence filed by the Landlord indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent on November 2, 2011 at 3:40 p.m. when it was posted to the Tenants' door in the presence of a witness.

Analysis

The Landlord has provided a copy of the 10 Day Notice to End Tenancy which in the section "you have failed to pay rent in the amount of \$700.00 that was due on 01/11/2011 (Day Month Year)". The Tenant ledger indicates that the amount of rent charged for November 2011 was \$675.00 not \$650.00 as indicated as the rent amount due in the tenancy agreement, and that on November 2nd, 2011 a late fee charge of \$25.00 was added to the Tenant's account bringing the total amount outstanding to \$700.00.

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 a 10 day Notice to End Tenancy which meets the form, content, and service under sections 52 and 89 of the *Residential Tenancy Act*.

In this case I find that the 10 Day Notice issued by the Landlord does not meet the requirements of the Act as the Notice was issued listing "**rent**" of \$700.00 was due on November 1, 2011 and is now past due. The evidence supports rent is only \$650.00, as per the tenancy agreement, and therefore if the November 1, 2011 rent is unpaid, the Notice should display this amount and not \$700.00. If the rent was increased from \$650.00 to \$675.00 a copy of the notice of rent increase must be submitted as evidence in a direct request process.

Late fees and bank fees, while they may be payable pursuant to the tenancy agreement and/or the Act, they are not rent and cannot be listed on the 10 Day Notice as being late. These fees do not become payable until the rent is late and therefore do not become payable in this case until the second of the month.

As per the aforementioned I find the 10 Day Notice to End Tenancy for Unpaid rent is invalid and is of no force or effect. Having found the 10 Day Notice issued November 2, 2011, to be invalid, I hereby dismiss the Landlord's application, without leave to reapply.

Conclusion

I HEREBY ORDER the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated November 2, 2011, is void and is without force or effect.

I HEREBY DISMISS the Landlord's application, without leave to reapply.

If rent remains unpaid the Landlord is at liberty to serve a new 10 Day Notice to End Tenancy and file an application for that Notice.

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: November 25, 2011.

Residential Tenancy Branch