



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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 18, 2011, the landlord served the tenant with the Notice of Direct Request Proceeding via personal service.

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

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 46, 55 and 67 of the Act.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof 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 June 3, 2009, indicating a monthly rent of \$1,350.00 due on the first day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 2, 2011, with a stated effective vacancy date of November 16, 2011, for \$1,400.00 in unpaid rent.
- A Notice of Rent Increase, dated March 17, 2010, increasing monthly rent from \$1,350.00 to \$1,400.00, beginning July 1, 2010.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay all rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by

posting on the door on November 2, 2011. Section 90 of the Act deems the tenant was served on November 5, 2011.

The Notice states that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end. I have no evidence before me that the tenant applied to dispute the Notice to End Tenancy or pay the rent listed 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 landlord.

Sections 40 through 43 of the Act provide for rent increases. A landlord must not increase the rent by more than the allowable rent increase as provided by Residential Tenancy Regulation (3.2% in 2010) without the tenant's written consent or the authority of a Dispute Resolution Officer pursuant to an application for an addition rent increase.

Based upon the evidence before me, I find the landlord did not comply with the Act by increasing the rent beyond the allowable amount, which in this case I find to be \$43.20, not \$50.00.

Since I have found the rent was not legally increased, I find the 10 Day Notice dated and issued November 2, 2011 to be invalid and unenforceable.

Conclusion

Based on the above I find that this application does not meet the requirements for the Direct Request process and I hereby **dismiss** the landlord's application without 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: November 28, 2011.

Residential Tenancy Branch