



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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 15, 2011, the landlord served each of the two co-tenants with the Notice of Direct Request Proceeding by registered mail, which under the Act is deemed to be received in five days.

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

The Fact Sheet containing directions and the requirements to apply for a resolution under this section states that the following mandatory documentation must accompany the Application:

- Copy of the 10 Day Notice to End Tenancy;
- Copy of the Tenancy Agreement signed by the parties;
- Proof of Service of the 10 Day Notice to End Tenancy

Submitted into evidence was a copy of the tenancy agreement showing two tenants, KB and TW, and signed on April 28, 2011, by KB only. The agreement showed the rent to be set at \$500.00 per month and a security deposit in the amount of \$250.00 was paid.

In this instance, I find that the landlord had complied with the criteria for the Direct Request process by submitting a copy of the tenancy agreement. However, this agreement was only signed by one of the two tenants named as respondents. Therefore, I find that the request for a Monetary Order can only proceed against the one tenant, who had signed the agreement, that being KB, and that no monetary order can proceed against TW, who did not sign the tenancy agreement.

Issue(s) to be Decided

The 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 a copy of the Notice to End Tenancy for Unpaid Rent and a "Proof of Service" form stating that the Notice was served to the tenant by posting it on the door on December 8, 2010 at 7:47a.m. in front of a witness.

The purpose of serving documents under the *Act* is to notify the person of a failure to comply with the *Act* and of their rights in response. The landlord, seeking to end the tenancy has the burden of proving that the tenant was served with the Notice to End Tenancy and I find that the landlord has met this burden.

Analysis

The landlord submitted written testimony on the Application form indicating that the tenant had fallen into arrears for November 2011 in the amount of \$397.50 and for December 2011 for rent of \$525.00. I find that the amount claimed for November is consistent with the amount shown on the Ten Day Notice to End Tenancy for Unpaid Rent served on the tenant on November 29, 2011 and I find that the landlord is entitled to be compensated for this amount. With respect to the \$525.00 rent claimed as owing for the month of December 2011, I find that this amount contradicts the monthly rental rate of \$500.00 shown in the tenancy agreement. Therefore I find I must dismiss this portion of the monetary claim. Based on the evidence, I find the landlord is entitled to monetary compensation under section 67 in the amount of \$397.50 for unpaid rent for November 2011.

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. Given the above facts I find that the landlord is entitled to an Order of Possession.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the landlord a monetary order in the amount of \$397.50 . This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: December 22, 2011.

Residential Tenancy Branch