



Dispute Resolution Services

Page: 1

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 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 December 16, 2011, at 3:00 p.m. the Landlord served the female Tenant with the Notice of Direct Request Proceeding in person at the rental unit. Based on the written submissions of the Landlord, I find the female Tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Residential Tenancy Act*?
2. Is the Landlord entitled to 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 the female Tenant;
- A copy of a residential tenancy agreement which was signed by the Landlord and the female Tenant on September 15, 2011, for a fixed term tenancy beginning October 1, 2011 and set to switch to a month to month tenancy after September 30, 2012. The monthly rent of \$1,050.00 is due on first day of the month and a security deposit of \$525.00 was paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, December 6, 2011, with an effective vacancy date of December 16, 2011 due to \$1,050.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid when it was posted to the Tenants' door on December 6, 2011 at 10:22 a.m. in the presence of a witness.

Analysis

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlords have applied for a monetary Order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*. In this case only one of the two Tenants has been personally served with the Notice of Direct Request Proceeding document. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only the Tenant (s) who has been properly served with Notice of this Proceeding. As there is insufficient evidence to support that the male Tenant has been properly served the Application for Dispute Resolution as required, the monetary claim against the male Tenant is dismissed without leave to reapply. The Monetary Claim will proceed against the female Tenant.

I have reviewed all documentary evidence and note that the tenancy agreement was signed by only the female Tenant; therefore I find the Landlord's application through the Direct Request process may only proceed against the one Tenant who signed the tenancy agreement.

As per the aforementioned I find the Landlord's application against the male Tenant, who did not sign the tenancy agreement, is dismissed without leave to reapply.

Order of Possession - I have reviewed all documentary evidence and accept that the female Tenant has been served with notice to end tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenant on December 9, 2011, three days after it was posted to the door, and the effective date of the notice is December 19, 2011, pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice and I hereby grant the Landlord an Order of Possession.

Monetary Order – The evidence supports that the Tenant has failed to pay the December 1, 2011 rent in violation of section 26 of the Act which provides that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order for **\$1,050.00**.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord's decision will be accompanied by a Monetary Order for **\$1,050.00**. This Order is legally binding and must be served upon the Tenant.

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 20, 2011.

Residential Tenancy Branch