



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 and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 11, 2011, the landlord served the tenant with the Notice of Direct Request Proceeding via personal delivery.

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 April 21, 2011, indicating a monthly rent of \$890.00 due on the 1st day of the month, beginning May 1, 2011; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 4, 2012, via personal delivery, with a stated effective vacancy date of January 15, 2012, alleging \$890.00 in unpaid rent.

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.

The landlord applied for a monetary order in the amount of \$90.00.

Analysis

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

The Details of the Dispute portion of the landlord's application stated that the tenant made a partial payment of rent on January 6, 2012, two days after being served the Notice, and also failed to pay the required \$100.00 additional rent for a male friend for November 2011, December 2011, and January 2012.

The Landlord has provided a copy of the tenancy agreement, which stated that the tenant's monthly rent obligation is \$890.00. The tenancy agreement also contains a clause that the rent will be increased by \$100.00 per month for each additional occupant.

The landlord failed to provide evidence to substantiate that there was an additional occupant residing in the rental unit and that an additional \$100.00 was owed by the tenant.

Additionally, while it is clear that the tenant made a payment of rent within the five days after receiving the Notice, it is unclear from the evidence submitted what amount of rent was owed by the tenant under the tenancy agreement and proof of any payments made thereafter. I am unable to determine if the amount of unpaid rent listed on the Notice was an attempt to collect additional sums from an alleged occupant.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The landlord is seeking to end the tenancy due to this alleged breach; however, the landlord has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy which meets the form, content, and service under sections 52 and 89 of the *Residential Tenancy Act*.

I find that the 10 Day Notice issued by the landlord does not meet the requirements of the *Act* as the landlord has failed to substantiate that the tenant's monthly rent had increased by \$100.00 and if the application was an attempt to collect sums not required under the tenancy agreement. Therefore the Notice is not enforceable as I am unable to substantiate the amount of rent listed in the application is the amount due.

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.

Conclusion

I HEREBY ORDER that the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated January 4, 2012, is without force or effect.

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

The landlord is at liberty to issue another 10 Day Notice to End Tenancy for Unpaid Rent to the tenant, with a request for a conference call hearing for the purpose of proving that the tenant was obligated to pay additional rent other than the amount listed in their evidence.

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: January 16, 2012.

Residential Tenancy Branch