



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 30, 2012 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the written submissions of the landlord, I find that the tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

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, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on December 16, 2010 for a tenancy beginning on January 1, 2011 for “not less than 12 months” for the monthly rent of \$850.00 due on the 1st of each month and a security deposit of \$425.00 was paid. The agreement also states that if the tenant terminates the tenancy after 6 months the tenant must pay the landlord \$350.00. There is no clause in the tenancy agreement as to what happens to the tenancy or its terms at the end of either the 6 months or 12 months; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on May 8, 2012 with an effective vacancy date of May 22, 2012 due to \$850.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the month of May 2012 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on May 8, 2012 at 4:30 p.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

Analysis

As the tenancy agreement provided does not specifically note whether or not the tenancy is a fixed term or a month to month tenancy, based on the clauses that state either the tenancy is for at least 12 months and if the tenant terminates the tenancy after 6 months, the intention of the parties was to enter into a fixed term tenancy.

Despite the agreement not being clear as to the length of that fixed term (6 or 12 months), and since the tenancy began on January 1, 2011, which was over 18 months from the beginning of the tenancy, I find that the fixed term has ended. I also note the tenancy agreement does not stipulate what the terms of any tenancy that might exist after the end of the fixed term. In fact, the agreement does not even stipulate if the tenancy will continue.

Because the tenancy agreement does not provide evidence of a current tenancy that could be confirmed through oral testimony, and because the Direct Request process does not allow an opportunity for any oral testimony to be heard, I find the Direct Request process is not a suitable forum for the adjudication of the landlord's Application.

Conclusion

For the reasons noted above, I dismiss the landlord's Application with leave to reapply through the participatory hearing process.

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: June 05, 2012.

Residential Tenancy Branch