



Dispute Resolution Services

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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.

While the landlord has named two tenants on both this Application for Dispute Resolution and the Tenancy Agreement, I note the tenancy agreement is signed by only one of the named respondents, as such I have amended the landlord's Application to exclude the named respondent who has not signed the tenancy agreement.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 20, 2012 at 3:15 p.m. the landlord served the tenant with the Notice of Direct Request Proceeding personally.

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 February 27, 2012 for a 5 month fixed term tenancy beginning on March 1, 2012 for the monthly rent of \$1,000.00 due on the 1st of each month and a security deposit of \$500.00 was paid. The tenancy agreement stipulates that the fixed term tenancy will end on July 31, 2012 and both parties have initialed the clause that states at the end of the tenancy the tenant must move out; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 2, 2012 with an effective vacancy date of September 15, 2012 due to \$2,300.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the months of July, August, and September 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 September 2, 2012 at 11:30 a.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

I have reviewed all documentary evidence and as the tenancy agreement stipulates that the tenancy was to end on July 31, 2012 and the tenants were to vacate the rental unit on that date, I find I am unable to determine the terms under which the tenancy agreement may have continued.

In addition, when applying through the Direct Request process there is no participatory hearing and therefore no ability to ask questions of either of the parties to determine what those terms are. As such, I find this Application is not suitable for the Direct Request process.

Conclusion

For the reasons noted above, I dismiss the landlord's Application with leave to reapply through the participatory hearing process or through the Direct Request process with all relevant documentation, particularly of the terms of the new tenancy agreed to by the parties.

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: September 26, 2012.

Residential Tenancy Branch