



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 for unpaid rent 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 August 31, 2012, at 12:30 p.m. the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail to the rental unit address. Canada Post receipts were provided in the Landlord's evidence. 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.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and 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 Landlord:

- 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 all parties for a fixed term tenancy beginning April 1, 2011 and switched to a month to month tenancy after March 31, 2012 for the monthly rent of \$1,450.00 due on 1st of the month and a security deposit of \$725.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, August 15, 2012, with an effective vacancy date listed as August 29, 2012, due to \$1,530.00 in unpaid rent that was due on August 1, 2012.

- A copy of the tenant ledger which indicates an accumulated unpaid balance due as of August 1, 2012 of \$1,505.00 and on August 3, 2012 a late payment fee of \$25.00 was added increasing the total amount due to \$1,530.00.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on August 15, 2012 via registered mail. Canada Post tracking information was provided which indicates the Tenant signed for the registered mail on August 17, 2012.

Analysis

Order of Possession - I have reviewed all documentary evidence and accept that the Tenant has been served with notice to end tenancy as declared by the Landlord. The notice was received by the Tenant on August 17, 2012; therefore the effective date of the notice is August 27, 2012, 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 – In this case the 10 Day Notice was issued listing “rent” of \$1,530.00 was due on August 1, 2012 and is now past due. The evidence supports the accumulated unpaid rent as of August 1, 2012 is only \$1,505.00 and therefore if the August 2012 rent is unpaid, the Notice should display \$1,505.00 and not \$1,530.00.

Late fees and bank fees, while they may be payable pursuant to the tenancy agreement and/or the *Act*, they are not rent and cannot be listed on the 10 Day Notice as being late. These fees do not become payable until the rent is late and therefore do not become payable in this case until the third of the month when they were applied to the Tenant’s account.

I accept that the Tenant has failed to pay the August 1, 2012 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 in the amount of **\$1,505.00**.

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 **\$1,505.00**. 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: September 06, 2012.

Residential Tenancy Branch