



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DIRECT REQUEST 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 December 1, 2012, the landlord served each co-tenant with the Notice of Direct Request Proceeding by registered mail sent to the dispute address. Pursuant to section 90(a) of the Residential Tenancy Act the tenant is deemed to have been served on the fifth day after the documents were sent.

Based on the written submissions of the Landlord, I find the tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and a Monetary Order for unpaid rent pursuant to sections 55, and 67 of the *Residential Tenancy Act (Act)*?

Background and Evidence

The landlord submitted the following evidentiary material:

- Proof of Service of the Notice of Direct Proceeding,
- Copy of a residential tenancy agreement signed by the parties, on July 1, 2012 with monthly rent of \$1,900.00 and a security deposit of \$950.00 to be paid.
- Copy of 10 Day Notice to End Tenancy for Unpaid Rent issued on November 2, 2012 with effective date of November 12, 2012 due to \$4,900.00 in unpaid rent.
- A copy of a letter from the landlord to the tenant dated September 14, 2012 cautioning the tenant that, their rent has been paid late three times.

- A copy of an unsigned letter, allegedly received by email from the tenant, dated October 15, 2012 which contained a schedule of payment of rental arrears showing the outstanding amount as \$7,400.00 including December 2012 rent. A damage deposit of \$600.00 is also shown as part of the arrears in the calculations.
- A copy of a second unsigned letter from the tenant dated November 10, 2012 containing a schedule of payment of rental arrears and showing the outstanding amount as \$4,900.00 including rent for November 2012. A damage deposit of \$600.00 is also shown as part of the arrears.
- A copy of a hand-written receipt issued to the tenant on October 25, 2012 for payment of \$600.00 *"for use and occupancy only"*.
- A copy of a printed receipt issued to the tenant on November 25, 2012 for payment of \$700.00 *"for use and occupancy only"*.

No tenant ledger was submitted by the landlord. However the application filed by the landlord showed a claim of \$4,900.00 was being made and the details make reference to emails purported to have been received from the tenant that confirm arrears including \$600.00 owed for the damage deposit.

The Proof of Service form in evidence indicated that the Ten-Day Notice for Unpaid Rent was served by posting it on the tenant's door on November 2, 2012 at 4:30 p.m. in front of a witness. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. I accept that the Ten Day Notice to End Tenancy for Unpaid Rent was properly served.

Analysis

I have reviewed all documentary evidence and accept that the tenant had been served with Notice To End Tenancy as declared by the landlord. The posted notice is deemed to have been received by the tenants 3 days thereafter, which would be on November 5, 2012. I accept the evidence before me proving that the tenants have failed to pay rent owed in full within the 5 days granted under section 46 (4) of the *Act* to cancel the Notice and did not file an application to dispute the Notice.

Based on the facts, 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.

The landlord has requested monetary compensation for the sum of \$4,900.00. However, in support for the amount of the arrears claimed, I find that the landlord failed

to submit a copy of the tenant's ledger and did not supply any rental account records from the landlord. I find that, instead, the landlord is relying on the two unsigned letters in evidence purporting to be emailed communications from the tenant to prove the precise amount of the arrears owed. I find that this evidence is not sufficient to verify the total debt. Due to the landlord's failure to provide a tenant account ledger properly confirming the history of charges and payments, I find that it is not possible to accurately determine the validity of the amount of rental arrears.

In addition to the deficiency above, I find that the landlord had incorrectly included monetary amounts, other than rent, in the monetary claim. A security deposit paid under section 38 of the Act is not considered to be rent, nor is the failure to pay the security deposit considered as rental arrears.

A Direct Request process submitted pursuant to section 55(4) of the Act can only determine a claim for rental arrears and to determine whether an order of possession is warranted based on rental arrears. An application under section 55(4) does not permit me to make a monetary order for other kinds of debts that may be owed under the tenancy agreement. Moreover, the inclusion of monetary claims in the calculation shown on a Ten Day Notice to End Tenancy for Unpaid Rent may affect the enforceability of the Notice.

Given the above, I find I am not able to grant the landlord's claim for compensation and must dismiss the monetary portion of the landlord's application.

However, with respect to the request for an Order of Possession, I hereby grant the landlord an Order of Possession effective two days after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The landlord is partially successful and is granted an Order of Possession, but the portion of the landlord's application seeking a monetary order is dismissed without leave.

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 06, 2012.

Residential Tenancy Branch