



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 October 9, 2013, at 5:00 p.m. the Landlord personally served, each Tenant with the Notice of Direct Request Proceeding documents, at the rental unit address. Additional proof of service documents were submitted with Canada Post tracking receipts which indicate that each Tenant was served the Notice of Direct Request Proceeding documents by registered mail; however, no date was indicated as to the date of service.

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 documents for each Tenant;
- A copy of a residential tenancy agreement which was signed by the female Tenant and which indicates she signed the tenancy agreement on behalf of her husband;

- Based on the tenancy agreement the tenancy was for a fixed term beginning on November 1, 2012, and switching to a month to month tenancy after November 1, 2013. Rent is payable on the first of each month in the amount of \$1,000.00;
- The notes to file indicate the Landlord stated that rent was increased to \$1,100.00 by mutual agreement; however no documentary evidence was provided to support a rent increase; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, October 2, 2013, due to \$1,100.00 in unpaid rent that was due on October 1, 2013.

Evidence on file indicates the 10 Day Notice was personally served to the female Tenant on October 2, 2013, and the female Tenant signed the 10 Day Notice acknowledging receipt of it.

Analysis

The Landlord's application and the 10 Day Notice indicate that rent is \$1,100.00 although the tenancy agreement indicates that rent is \$1,000.00. There was no evidence provided to support a new tenancy agreement was signed or that the rent was increased in accordance with sections 41, 42, and 43 of the Act.

Upon consideration of the above mentioned inconsistencies I find this application does not meet the requirements of the Direct Request Process. I make this finding in part because section 43(5) of the Act stipulates that if a landlord collects a rent increase that does not comply with the Act the tenant may deduct the increase from rent or otherwise recover the increase.

Based on the above, and in the absence of testimony from both parties, I find there to be insufficient evidence to determine if rent is unpaid or if the Tenants were simply deducting an illegal rent increase from their rent. Accordingly, I dismiss this application.

Conclusion

The Landlord's application is HEREBY DISMISSED. The Landlord is granted leave to reapply through the participatory hearing process if they wish to pursue this matter.

No findings of fact or law have been made relating to the 10 Day Notice issued October 2, 2013.

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: October 25, 2013

Residential Tenancy Branch

