



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DIRECT REQUEST DECISION AND REASONS

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 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 20, 2013 at 4:00 p.m. the landlord personally served the tenant with the documents in front of a witness.

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 March 26, 2013 with monthly rent of \$1,200.00 due, in advance, on the day prior to the first day of each rental period.
- Copy of 10 Day Notice to End Tenancy for Unpaid Rent issued on July 12, 2013 with effective date of July 22, 2013 due to \$2,400.00 in unpaid rental arrears.

A communication from the landlord to the tenant showing the tenant's rental account was submitted. This document showed that the tenant owed \$1,200.00 rent for June, \$1,200.00 rent for July, \$1,200.00 rent for August and \$25.00 fee for, "*TOTAL OWING: \$5,150.00*".

The application for Direct Request Proceeding, filed by the landlord, showed that the landlord is claiming \$2,400.00. However, the "*Details of the Dispute*" section of the application indicated the following:

"TENANT DID NOT PAY: June Rent for 1,200; July Rent for 1,200; August rent for 1,200. Tenant did not pay late fees as per ADDENDUM TO THE CONTRACT (point 7) – TOTAL \$5,150.00".

The Proof of Service form verified that the Ten-Day Notice for Unpaid Rent of \$2,400.00 was served in person to the tenant by posting it on the door on July 12, 2013, in front of a witness. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution, or the tenancy would end.

Analysis

I have reviewed all documentary evidence and accept that the tenant was served with a Notice To End Tenancy as declared by the landlord. I accept the evidence before me that the tenant has failed to pay all of the rental arrears owed in full within the 5 days permitted under section 46 (4) of the *Act*.

Based on the facts, I find that the tenant did not dispute the Notice and did not pay the arrears. Therefore, under the *Act*, 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 \$2,400.00 on the application form. However, in the details section of the application, the landlord indicates that the tenant is actually in arrears for \$5,150.00 in rent, plus daily late fees. Moreover, I find that the 10-Day Notice to End Tenancy for Unpaid Rent states that \$2,400 is owed for June and July 2013, but also includes a notation indicating that the tenant owes "\$25 X 12 Days" as well. I note that the tenancy agreement contains noncompliant unenforceable terms relating to late fees.

Although I accept the landlord's evidence that the tenant is in arrears for rent for some amount, I find that am not able to make any determination with respect to the landlord's monetary claims. This is due to the contradictory amounts included in the application and the inclusion of noncompliant late fees noted on the 10-Day Notice. Therefore I find

that the landlord's monetary claim cannot proceed through the Direct Request process.

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.

The portion of the landlord's claim requesting a monetary order for rental arrears is dismissed with leave to reapply.

Conclusion

The landlord is partially successful in the application and is granted an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent. The portion of the application requesting a monetary order is dismissed with 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: September 04, 2013

Residential Tenancy Branch

