



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 application proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act. The landlord seeks an Order of Possession and a monetary order for rental arrears based on a 10-Day Notice to End Tenancy for Unpaid Rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 24, 2013 at 6:44 p.m., the landlord served the tenant with the Notice of Direct Request Proceeding in person.

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

Issue(s) to be Decided

Is the landlord is entitled to an Order of Possession for unpaid rent and a monetary Order for unpaid rent pursuant to sections 55 and 67 of the Act?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding and Proof of Service of the Ten-Day Notice, verifying service to the tenant,
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 4, 2013 for \$1,200.00 in rental arrears, and
- A copy of a residential tenancy agreement which was signed by the parties on July 31, 2013, confirming that the rent is \$1,200.00 per month, due on the first day of each month.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay \$730.00 rent owed for the month of September 2013 and the landlord is seeking

compensation in this amount and an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

Analysis

Based on the evidence before me, I find that the tenant was duly served with a Notice to End Tenancy for Unpaid Rent in person on September 4, 2013. The Notice states that the tenant has five days to pay the rent to cancel the Notice or to apply for Dispute Resolution to dispute the Notice. I find that the tenant did not apply to dispute the Notice to End Tenancy within five days and did not pay the arrears within five days.

I find that the tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Given the above facts, I find that the landlord is entitled to an Order of Possession.

With respect to the monetary claim, I find that the 10-Day Notice to End Tenancy for Unpaid Rent showed that the tenant owed \$1,200.00 on September 4, 2013. However, by September 19, 2013, the amount of the rental arrears had changed and the landlord's application indicated that the tenant now owes \$730.00. I find that the tenant had made a payment towards the arrears that was accepted by the landlord.

I find that, under the Act, accepting a payment may be perceived as reinstating the tenancy, unless the landlord makes it clear to the tenant that this payment is being accepted, "*for use and occupancy only*" and does not function to reinstate the tenancy after the Notice to End Tenancy was issued. I find that, in this case, the landlord did not supply adequate details to confirm the circumstances under which the payment was given and accepted.

In addition to the above, I find that the landlord had included noncompliant terms within the tenancy agreement that impose excessive late fees than what is permitted under the Act.

For the reasons above, I find that the portion of the landlord's application relating to the monetary claim cannot proceed through the Direct Request process as it requires additional clarification. Accordingly, the landlord's monetary claim must be dismissed with leave to reapply.

I hereby grant the landlord an Order of Possession effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby dismiss the applicant's monetary claim with leave to reapply.

Conclusion

The landlord is partly successful in the application and is granted an Order of Possession. The portion of the landlord's application seeking monetary compensation is dismissed with leave to reapply.

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 11, 2013

Residential Tenancy Branch

