



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 2128 INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DIRECT REQUEST DECISION

Dispute Codes :

OPR, MNR

Introduction

The 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, a monetary order for rental arrears and payment of the security deposit.

The landlord submitted signed Proofs of Service of the Notice of Direct Request Proceeding which declares that on January 28, 2014 at 8.25 p.m., the landlord served each tenant with the Notice of Direct Request by registered mail.

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 and a Monetary Order for rental arrears pursuant to 55 and 67 of the *Residential Tenancy Act*?

Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a copy of the Notice to End Tenancy for Unpaid Rent that indicated the tenant was \$1,495.00 in arrears for rent. The landlord also included a "Proof of Service" form stating that the Notice was served to the tenant in person on January 13, 2014 at approximately 6:00 p.m., acknowledged by the tenant's signature.

The purpose of serving documents under the Act is to notify the person of a failure to comply with the Act and of their rights in response. The landlord, seeking to end the tenancy has the burden of proving that the tenant was served with the Notice to End Tenancy and I find that the landlord has met this burden.

Analysis

Submitted into evidence was a copy of the tenancy agreement signed on January 7, 2014 and rent was set at \$975.00 per month.

In the Application for Direct Request the landlord indicated that the tenant was in arrears for \$975.00 in rent and \$487.50 for an unpaid security deposit, due to the fact that the tenant's cheque did not clear.

The Ten Day Notice to End Tenancy for Unpaid Rent shows rental arrears of \$1,462.50.

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement.

In this instance, I find that the tenant did not pay \$975.00 for rent in January when the rent was due.

When a tenant fails to comply with section 26, section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. In this instance I find that the tenant did neither.

I find that this tenant was in rental arrears at the time the Ten Day Notice to End Tenancy for Unpaid Rent was served on the tenant and the tenant did not pay the arrears, nor did the tenant dispute the Notice.

Section 46(5) of the Act provides that if a tenant does not pay the rent or make an application for dispute resolution in accordance with the above, then the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

With respect to the landlord's inclusion of a monetary claim for the unpaid security deposit, I find that an application for a Direct Request Proceeding, under section 55(4), only pertains to an Order of Possession and rent owed, and does not permit a monetary order for other damages or debts, such as an unpaid security deposit.

Section 47(1)(a) of the Act states that, if the tenant has failed to pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement, a landlord may serve a One-Month Notice to End Tenancy for Cause.

I find that, because amount sought in the landlord's Application for Direct Request Proceeding included an amalgamated claim for other debts, such as the unpaid security

deposit, along with the rental arrears, a determination of the landlord's monetary claim cannot proceed. Therefore I find that I must dismiss the monetary portion of the application before me.

Based on the evidence submitted by the landlord, I find that the landlord is entitled to an Order of Possession.

I hereby issue an Order of Possession in favour of the landlord, 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.

The remainder of the landlord's application is dismissed without leave.

Conclusion

The landlord is partially successful in the application and is granted an Order of Possession. The portion of the 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: January 29, 2014

Residential Tenancy Branch

