



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (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 February 28, 2014, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail.

Section 90 of the Act determines that a document served in this manner is deemed to have been received 5 days after service.

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

Issues to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding;
- A copy of a residential tenancy agreement which was signed by the parties on July 29, 2013, indicating that the tenant is obligated to pay \$1,450.00 in rent in advance on the fifteenth day of the month and providing that the tenant must pay a \$50.00 late payment fee if the rent is not paid on time;

- The first page of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") which the landlord served on the tenant on for \$4,240.00 in unpaid rent due in the months of December, January and February; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice on the tenant by registered mail on February 17, 2014.

Section 90 of the Act provides that because the Notice was served by registered mail, the tenant is deemed to have received the Notice 5 days later on February 22, 2014.

The Notice restates section 46(4) of the Act which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I find that the tenant received the Notice on February 22, 2014. However, I am not satisfied that the tenant was served with both the first and second page of the Notice. While the second page of the Notice does not contain specifics about the rental arrears, it contains the information about the tenant's rights and opportunity to dispute the Notice.

The tenancy agreement contains a provision in the addendum requiring the tenant to pay a \$50.00 fee if she pays the rent late. Section 7(1)(d) of the Residential Tenancy Regulations allow for a late payment fee of no more than \$25.00. I find that the \$50.00 fee imposed by the landlord is illegal and unenforceable. In the total amount owing listed on the Notice, the landlord included a \$50.00 fee for each of the months in which she alleges that the tenant failed to pay the full amount of the rent which I find would have given the tenant the impression that in order to cancel the notice, she would have to pay both the rental arrears and an illegal amount for a late payment fee. Because I am not satisfied that the tenant was made aware of her ability to dispute the Notice and because the tenant may have been misled about what she had to pay in order to cancel the Notice, I find that the Notice did not effectively communicate to the tenant her rights under the law and I find that it cannot be effective to end the tenancy. The claim for an order of possession is therefore dismissed. The landlord is free to issue another notice and should serve both pages and include only rental arrears in the amount owing.

I accept the landlord's undisputed evidence and I find that the tenant failed to pay \$1,190.00 of the rent due on December 15 and paid no rent whatsoever for the months of January and February for a rental arrears total of \$4,090.00. I find that the landlord is entitled to recover the rental arrears and I grant the landlord a monetary order for \$4,090.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for \$4,090.00. The application for an order of possession is dismissed.

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: March 06, 2014

Residential Tenancy Branch

