



Dispute Resolution Services

Page: 1

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 March 29, 2014 at 11:13 p.m., the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Residential Tenancy Act, (*the Act*), determines that a document is deemed to have been served on the fifth day after it was sent.

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

Preliminary Matter

The Fact Sheet containing directions and the requirements to apply for a resolution under this section states that the following mandatory documentation must accompany the Application: Copy of the 10 Day Notice to End Tenancy; Copy of the Tenancy Agreement signed by the parties and Proof of Service of the 10 Day Notice to End Tenancy.

Submitted into evidence by the landlord was a copy of the tenancy agreement showing rent set at \$720.00 per month. This agreement was only signed by one of the two co-tenants named in the style of cause in the landlord's application. The second co-tenant named as a respondent/co-tenant had not signed the tenancy agreement.

In this instance, I find that the landlord complied by submitting the mandatory documents by providing a copy of the tenancy agreement. However, because the agreement was only signed by one of the two respondent tenants, I find that the request for compensation must only proceed against the tenant who signed the agreement.

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 March 14, 2014 for \$2,010.00 in rental arrears,
- A copy of a 10-Day Notice to End Tenancy for Unpaid Rent dated February 24, 2014 for \$720.00 in rental arrears,
- A copy of the tenant's ledger and monetary worksheet up to March 2014,
- A copy of a 1 Month Notice to End Tenancy for Cause and other documents including copies of communications,
- A copy of a residential tenancy agreement signed by one of the co-tenants/respondents on June 23, 2013, confirming that the rent is \$720.00 per month, due on the last day of each month.

Documentary evidence filed by the landlord indicated that the tenant had accrued a total amount of arrears of \$2,010.00 and provided a ledger. Evidence was submitted that shows that a payment was made by the tenant after the 10-Day Notice to End Tenancy for Unpaid Rent was issued through an interact e-transfer on March 3 2014, and there is a handwritten notation stating; "*for Feb Rent*". (Reproduced as written)

In one of the communications from the landlord to the tenant, the landlord states that the late charges being increased to \$5.00 per day and NSF charges are \$40.00 per incident.

The landlord seeks both an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent and a monetary order for the accrued arrears.

Analysis

Based on the evidence before me, I find that the tenant was duly served with a Notice to End Tenancy for Unpaid Rent by posting it on the tenant's door on March 14, 2014 in front of a witness. 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 all of the arrears owed 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 Documentary evidence filed by the landlord indicated that the tenant accrued a total amount of arrears of \$2,010.00 and the landlord provided a Monetary Order worksheet documenting the tenant's payment history.

However, there is evidence that a partial payment was made by the tenant after the 10-Day Notice to End Tenancy for Unpaid Rent was issued and I find that this raises the question of possible reinstatement of the tenancy.

In addition to the above, based on the documentary evidence submitted by the landlord, I find that the late charges and NSF charges imposed by the landlord in the letter dated December 7, 2012 exceed the limits under the Act.

Section 7(1) (d) of the *Residential Tenancy Regulation*, (the *Regulation*), provides that a landlord can charge an administration fee of not more than \$25.00 per month for late fees and administration fees..

Section 5 of the Act states that parties are not permitted to avoid or contract out of the Act or the regulations, and that any attempt to avoid or contract out of the Act or the regulations is of no effect.

Given the above, I find that the landlord's evidence with respect to the amount of the rental arrears owed cannot be accurately determined in order to award compensation through the direct request process.

Accordingly, I hereby dismiss the monetary portion of the landlord's application with leave to reapply for monetary compensation through a participatory hearing.

Notwithstanding the above, I do accept that the tenant is in arrears for some amount of rent and has not disputed the notice nor paid all of the arrears. Therefore, 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 order that the portion of the landlord's direct request application relating to the monetary claim is dismissed with leave.

Conclusion

The landlord is partly successful in the application and is granted an Order of Possession. The claim for 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: April 09, 2014

Residential Tenancy Branch

