



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

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 May 25, 2014 at 4:11 p.m. the landlord served the tenant with the Notice of hearing package by registered mail. Section 90 of the Act provides that mailed documents are deemed served in 5 days .

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,
- A Copy of a residential tenancy agreement signed by the parties, but not showing any date for the signatures.
- Copy of 10 Day Notice to End Tenancy for Unpaid Rent issued on May 7, 2014 due to \$863.00 in unpaid rental arrears.

The application for Direct Request Proceeding, filed by the landlord, showed that the landlord is claiming \$448 which includes late fees. The “*Details of the Dispute*” section of the application indicated the following:

“*MONETARY CLAIM INTOTAL AMOUNT OF \$423 UNPAID MAY RENT + 25 LATE FEE MAY = TOTAL \$448.00*” (Reproduced as written)

Preliminary Matters

In regard to the landlord's monetary claim for rental arrears, I find that the landlord have included fees, other than rent, in the total amount of the monetary claim.

Therefore I find I am not able to consider the monetary claim portion of the application under section 55(4) of the Act. A Direct Request process can only apply to rental arrears and an Order of possession based on rental arrears. It does not permit a monetary order for other kinds of damages or debts including late fees, bank fees, parking or utilities that may be owed under the tenancy agreement. Therefore, I find I must dismiss the monetary portion of the landlord's application.

In addition to the above, because this is an application to proceed by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the Act there are certain requirements with respect to the documentation to be provided by the landlord. 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
- Proof of Service of the 10 Day Notice to End Tenancy

I find that, while this application did include a copy of a tenancy agreement, the agreement is not in compliance with section 13 of the Act which sets out the mandatory terms that must be included within the tenancy agreement. The agreement must be **signed and dated by both the landlord and the tenant**. In this instance, the signatures are not dated by the parties.

Given the above, I find that this matter may not proceed by way of a direct request proceeding. It is therefore necessary to dismiss this application, and I do so granting the landlord leave to reapply.

The landlord is at liberty to make an application to pursue this matter through a regular

teleconference hearing that would permit verbal testimony to be given regarding the specific terms of the tenancy agreement between the parties.

I hereby dismiss the landlord's application with leave to reapply for a participatory hearing in which testimony can be given with respect to the tenancy agreement.

Conclusion

The landlord is not successful in the Direct Request application, and it is dismissed with leave to reapply for a participatory hearing.

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: May 30, 2014

Residential Tenancy Branch

