



Dispute Resolution Services

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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 signed Proofs of Service of the Notice of Direct Request Proceeding; they declared that on August 15, 2014, the landlord's agent personally served each tenant with the Notice of Direct Request Proceeding.

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

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary order for unpaid rent and if so, in what amount?

Background and Evidence

The landlord submitted the following documents:

- Copies of the Proofs of Service of the Notice of Direct Proceeding for the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on March 8, 2014, providing for a monthly rent of \$1,350.00 due on the first day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on August 7, 2014 with a stated effective vacancy date of August 31, 2014, for \$1,350.00 in unpaid rent said to be due on July 1, 2014..

The tenants were personally served with the Notice to End Tenancy on August 7, 2014

The tenants did not apply to dispute the Notice to End Tenancy, but they did submit documentary evidence in response to the landlord's application. The tenant submitted a copy of a cancelled cheque dated July 7, 2014 in the amount of \$1,250.00. The evidence was submitted on August 19, 2014. According to the tenants written submissions they maintained that they were entitled to withhold rent because of what they claimed were deficiencies in the rental unit.

The landlord responded to the tenants' evidence. He acknowledged that the tenants paid \$1,250.00 rent for July, contrary to the Notice to End Tenancy. He said that the tenants paid only part of the July rent and the Notice to End Tenancy that was given to the tenants on August 7, 2014, incorrectly referred to July rent of \$1,350.00 as outstanding, when in fact there was \$100.00 outstanding from July and \$1,350.00 owed of August, for a total of \$1,450.00.

The Notice given to the tenants on August 7, 2014 stated that the tenants had five days from the service date to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis and conclusion

The Residential Tenancy Policy Guideline with respect to Direct Requests provides that:

The possible outcomes of a direct request hearing are:

- Order of Possession because the tenant has not paid rent;
- Order of Possession because the tenant has not paid rent and Monetary Order for unpaid rent;
- adjourned, with the hearing reconvened as a participatory hearing;
- dismissed with leave to reapply; and,
- dismissed without leave to reapply.

The landlord served the tenants with a 10 day Notice to End Tenancy for unpaid rent. The tenants did not apply to dispute the Notice to End Tenancy and the evidence submitted by the parties established that there was some rent unpaid for July. The tenants did not dispute the Notice to End Tenancy and they did not establish that they had any valid ground to withhold payment of rent.

The Notice to End Tenancy claimed payment of rent for July and the application for dispute resolution claiming unpaid rent was based on that Notice to End Tenancy. Based on the undisputed evidence that there is some amount of unpaid rent for July, I find that the landlord is entitled to an order for possession, but due to the landlord's

failure to accurately state the claim for unpaid rent, I find that the landlord's claim for a monetary order should be dismissed with leave to reapply.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and this Order may be filed in the Supreme Court and enforced as an Order of that Court.

The landlord's claim for a monetary order 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: August 25, 2014

Residential Tenancy Branch

