



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; that declared that on October 23, 2014 the landlord served the tenants with the Notice of Direct Request Proceeding by registered mail.

Pursuant to section 90 of the *Residential Tenancy Act* the tenants are deemed to have received the documents five days after mailing. 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 tenant;
- A copy of a residential tenancy agreement which was signed by the parties on October 1, 2014, providing for a monthly rent of \$800.00 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 October 16, 2014 with a stated effective vacancy date of October 26, 2014, for \$800.00 in unpaid rent.
- A copy of a handwritten agreement whereby the landlord and tenants agreed that the tenants would move out of the rental unit and the landlord would refund the tenants' rent payment.
- A receipt from the tenants acknowledging payment of the sum of \$800.00.

The landlord stated in a separate document that the tenants have refused to move out despite their signed agreement and reimbursement of full rent.

Analysis and conclusion

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

The Legislation limits the direct request process to applications for Orders of Possession and Monetary Orders concerning unpaid rent. Requests to keep the security deposit or for compensation for damages are considered through the conventional dispute resolution process.

The Guideline provides that:

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The landlord must provide, when making an application for dispute resolution, copies of:

- the tenancy agreement;
- documents showing changes to the tenancy agreement or tenancy, such as rent increases, or changes to parties or their agents;
- documents supporting the amount of rent due, such as rent ledger or receipt book;
- the 10-Day Notice to End Tenancy for Unpaid Rent (this is often considered proof that the tenant did not pay rent); and,
- proof that the landlord served the tenant with the 10-Day Notice to End Tenancy for Unpaid Rent.

The guideline goes on to say that:

The Residential Tenancy Branch may dismiss, with leave to reapply, an application made through the Direct Request process when a landlord:

- has not provided all the required documents with the application for dispute resolution;
- has not provided proof of service of the required documents; or
- has applied to recover the filing fee, retain the security deposit or for compensation other than the unpaid rent, in addition to the Order of Possession and unpaid rent

In this application the landlord has applied to end the tenancy pursuant to a 10 day Notice to End Tenancy for unpaid rent, but the landlord's documents reveal that the landlord's grounds for seeking to end the tenancy are based upon an alleged breach of an agreement to end the tenancy and move out of the rental unit. The landlord is now attempting to recover a rent payment that was refunded to the tenants. This is not an appropriate claim for a direct request proceeding. The landlord's application for an order for possession and for a monetary award is dismissed with leave to reapply. If the landlord decides to file a new application for dispute resolution, it should proceed by way of a participatory hearing and not as a direct request.

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: November 13, 2014

Residential Tenancy Branch

