



Dispute Resolution Services

Page: 1

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 deals with an Application for Dispute Resolution by the Landlord for:

1. An Order of Possession – Section 55; and
2. A Monetary Order for unpaid rent – Section 67.

Given the Landlord's signed proof of service, I find that the Landlord served each Tenant with the Notice of Direct Request Proceeding by registered mail on October 25, 2014 in accordance with the Act.

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?

Background and Evidence

In the Application made November 21, 2014 the Landlord claims unpaid rent of \$1,530.00 and provides the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding;
- A copy of a residential tenancy agreement signed by the Parties indicating a tenancy start date of July 1, 2014 and a monthly rent of \$1,100.00 due on the first day of the month;

- A Monetary Order Worksheet showing the calculations for the amount claimed and indicating that the last monies were received on October 1, 2014 ;
- A copy of a 10 day notice to end tenancy for unpaid rent (the “Notice”) issued on November 2, 2014 with a stated effective vacancy date of November 15, 2014 for \$1,530.00 in unpaid rent due October 1, 2014;
- A copy of a Tenant’s cheque dated November 15, 2014 for the amount of \$1,500.00 and indicated as rent; and
- A proof of service of the Notice showing that the Landlord served the Notice to the Tenant in person on November 2, 2014.

Analysis

Section 46 of the Act provides that a tenant may, within 5 days after receiving a notice to end tenancy for unpaid rent, pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. If a landlord accepts rent after on or after the effective date of the notice to end tenancy, evidence of intent of the parties will determine whether the tenancy has been reinstated. Where a tenancy is reinstated, a notice to end tenancy is no longer of any effect.

Under the Direct Request Proceedings, the evidentiary documents must support the claims being sought. A reinstatement of a tenancy may be determined based on the evidence of the parties. Given the Landlord’s evidence that the Landlord received \$1,500.00 on the effective date of the Notice, that these amounts were not included in the application or set out in the monetary order worksheet, both prepared after the date of receipt of this money, I find that the Landlord has provided conflicting evidence of the basis for its monetary claim and has therefore not substantiated this claim. As I have only the Landlord’s evidence to consider under the Direct Request Proceeding and given that there is no evidence from the Landlord to indicate that a receipt was provided to the Tenant indicating that the \$1,500.00 was accepted as “use and occupancy only”, I

find on a balance of probabilities, that the tenancy was reinstated and that the Notice was therefore no longer valid. As a result I dismiss the application.

Conclusion

The application 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: December 05, 2014

Residential Tenancy Branch

