



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 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 in person on November 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?

Relevant Background and Evidence

In the Application made November 25, 2014 and amended November 28, 2014 the Landlord claims unpaid rent of \$5,250.00 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 April 1, 2014 and a monthly rent of \$925.00 due on the first day of the month;
- A Monetary Order Worksheet showing calculations for the amount claimed;
- A copy of a 10 day notice to end tenancy for unpaid rent (the “Notice”) issued on November 19, 2014 with a stated effective vacancy date of November 29, 2014 for \$4,325.00 in unpaid rent due November 14, 2014; and
- A proof of service of the Notice showing that the Landlord served the Notice to the Tenant personally on November 19, 2014.

The Landlord submits that the Parties received a previous Decision and Orders dated November 12, 2014 arising from the Landlord’s claims for unpaid rent of \$3,400.00 to September 19, 2014. The Landlord submits that the previous orders cannot be enforced as the names of the Tenants had been incorrectly provided by the Landlord. The Landlord submits that since the previous Decision the Tenant has failed to pay an additional \$1,850.00 in rent.

Analysis

The legal principle of ***Res judicata*** prevents a party from pursuing a claim that has already been decided. Where a disputed matter is identical to or substantially the same as the earlier disputed matter, the application of res judicata operates to preserve the effect of the first decision or determination of the matter. As the dispute between the named Parties in this application in relation to unpaid rent to September 19, 2014 and in relation to possession of the unit has already been determined under a previous Decision with Orders issued accordingly, albeit with incorrectly spelled names as provided by the Landlord, I find that res judicata applies and I may no longer consider the Landlord’s claim for an order of possession and rent to September 19, 2014. I therefore dismiss these claims. I note that the order of possession for the rental unit is still valid and that no application for a correction to the previous Decision and Orders

has been made. Based on the undisputed evidence that the Tenant failed to pay rent since the last Decision and has continued to reside in the rental unit, I find that the Landlord has established an entitlement to over holding rents in the amount of \$1,850.00.

Conclusion

I grant the Landlord an order under Section 67 of the Act for the amount of **\$1,850.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 09, 2014

Residential Tenancy Branch

