



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 a signed Proof of Service of the Notice of Direct Request Proceeding; it declared that on January 26, 2015, the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail sent to an address other than the address of the rental unit.

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:

- A copy of the Proof 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 June 21, 2014, providing for a monthly rent of \$1,800.00 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 23, 2014 with a stated effective vacancy date of November 11, 2014, for \$3,130.00 in unpaid rent.

The tenant was personally served with the Notice to End Tenancy on October 23, 2014.

The Notice given to the tenant on October 23, 2014 stated that the tenant had five days from the service date to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

In the application for dispute resolution the landlord stated that he received a rent payment of \$470.00 on October 6, 2014 and a payment of \$500.00 on November 3, 2014. He claimed in the application that \$2,630.00 was owed for rent for the months of September and October. The landlord made no mention of any payments for any subsequent month after October, although he requested an order for possession and although his application was not filed until January 26, 2015.

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.

With respect to the last item the Guideline states that:

Dismissed Without Leave to Reapply

The Residential Tenancy Branch may dismiss, without leave to reapply, an application made through the Direct Request process when a landlord fails to prove their claim or the evidence indicates the landlord would not be successful in any event. For example, when there is an error which invalidates the 10-Day Notice to End Tenancy. In this example, the landlord would have to issue a new

valid 10-Day Notice to End Tenancy. If the tenant did not respond to the new valid notice, the landlord could submit a new application through the direct request or conventional dispute resolution process

The landlord waited three months after serving the Notice to End Tenancy to file his application for dispute resolution. He did not provide any documents to show what rent payments have been made in the intervening period. Since he has claimed only rent for September and October I must assume either that the tenant has made some monthly rent payments over the past three months or that the tenancy ended in October. If the tenancy did continue then any payments made would normally be applied firstly to arrears and secondly to current rent. In the absence of any records or receipts I am unable to determine whether or not the tenancy was reinstated by the acceptance of rent payments after November 3rd, 2014. In the absence of evidence to satisfy me on a balance of probabilities that the three month old Notice to End Tenancy is still valid, I dismiss the landlord's application for an order for possession without leave to reapply. If this is simply a proceeding to claim a monetary award for unpaid rent after the tenancy has ended, then it is not properly brought as a direct request proceeding. The landlord's application for a monetary order is dismissed with leave to reapply. Any new claim for a monetary award should be made by way of an application for a participatory hearing with proof that the tenant has been served at the address where she resides or to a forwarding address provided by the tenant to the landlord.

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: February 05, 2015

Residential Tenancy Branch

