



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DIRECT REQUEST DECISION

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 17, 2009 the landlord served each tenant with the Notice of Direct Request Proceeding in person.

Based on the written submissions of the landlord, I find the tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*. I have reviewed all documentary evidence submitted by the landlord.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service to the tenant of the Notice of Direct Proceeding
- A copy of a residential tenancy agreement which was signed by the parties indicating \$850.00 per month rent due on the first day of the month
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 3, 2009 with a vacancy date of April 14, 2009 for \$850.00 in rental arrears.
- A copy of proof of service of the Ten-Day Notice

No copy of the resident ledger was submitted.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay \$850.00 rent owed for the month of April, 2009, pursuant to terms contained in the tenancy agreement. The landlord is also claiming damages of \$400.00. The evidence indicates that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by an agent of the landlord on the afternoon of April 3, 2009 by giving it to the tenant in person. The Notice states that the tenant had five days to pay the rent 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 and did not pay the arrears within five days. I accept that the tenant has been served with notice to end tenancy effective on April 14, 2009 as declared by the landlord.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

I find that the landlord is entitled to receive compensation for rental arrears for April 2009 and has established a total monetary claim of \$900.00 comprised of \$850.00 rental arrears and the \$50.00 fee paid by the landlord for this application.

In regards to the \$400.00 claim for damages I find that this is premature and cannot be claimed under the Act until the tenant has had an opportunity to clean and repair damage prior to vacating. In addition a direct request claim under section 74(2) only applies to an Order of Possession and monetary compensation for rent owed, and does not permit a monetary order for other damages. Therefore, I find I must dismiss this portion of the landlord's application without leave.

I order that the landlord retain the security deposit and interest of \$ 400.00 in partial satisfaction of the claim leaving a balance due of \$500.00.

Conclusion

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

I hereby issue a Monetary Order in favour of the landlord for \$500.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

April 2009

Date of Decision

Dispute Resolution Officer