



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This matter was conducted 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, a monetary order, an order to retain the security deposit in partial satisfaction of the claim and filing fee costs.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that the landlord posted the Direct Request Proceeding package to the door of the rental unit on June 24, 2009. The landlord also submitted evidence that the proceeding package was served via registered mail sent to the tenant on July 29, 2009.

The landlord received the proceeding package on June 23, 2009 and is required to serve the respondent within three days. The landlord has served the respondent within the required time-frame, by posting the proceeding package to the door of the rental unit. However, as determined by section 89(1) of the Act, posting is not an approved method of service for the purposes of a monetary Order claim.

The landlord has served the tenant via registered mail, but failed to do so within the required three day period. Therefore, I find that this application for dispute resolution will consider only the landlord request for an Order of possession.

Section 90 of the Act determines that a document is deemed to have been served on the third day after posting.

Based on the written submissions of the landlord, I find that the tenant has been served with the Direct Request Proceeding documents for the purposes of a monetary claim for compensation.

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 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, and 72 of the Act.

Background and Evidence

The landlord submitted the following evidentiary material:

- 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 17, 2004, indicating a monthly rent of \$575.00 due by the first day of the month and that a deposit of \$287.50 was paid on June 14, 2004; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on June 5, 2009 with a stated effective vacancy date of June 15, 2009 for \$610.00 in unpaid rent due on June 1, 2009.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door on June 5, 2009 at 11:30, with the building caretaker present. The Act deems the tenant was served on June 8, 2009; three days after posting.

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 from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord.

Section 53 of the act allows an effective date stated in the Notice that is earlier than the earliest date permitted under the Act, to be changed to the earliest date that complies with the section. Therefore, the effective date of the Notice is changed to June 18, 2009.

I accept the evidence before me that the tenant has failed to pay rent owed within the five days granted under section 46 (4) of the *Act*. In the absence of evidence that the landlord has issued a rent increase in the approved form I would not accept any claim for compensation beyond the amount indicated as rent on the tenancy agreement. However; I have dismissed the landlord's claim for monetary compensation as the tenant was not properly served with notice of this proceeding for the purposes of a monetary Order. I have no evidence before me that the tenant has applied to dispute the notice to end tenancy.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Therefore, I find that the landlord is entitled to an Order of possession and the application fee cost.

The landlord has requested retention of the deposit in partial satisfaction of the monetary claim for compensation. The landlord may retain the \$50.00 filing fee from the deposit and will continue to hold the balance of the deposit in trust for disbursement as required by the Act.

Conclusion

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

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$50.00** comprised of the fee paid for this application and that this amount may be retained from the deposit paid by the tenant.

The landlord's monetary claim is dismissed with leave to reapply.

Dated August 11, 2009.

Dispute Resolution Officer