



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

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 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 November 19, 2009 the landlord served each tenant the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided Canada Post receipts and tracking numbers as evidence of service. Section 90 of the Act determines that a document is deemed to have been served on the fifth day after mailing.

Based on the written submissions of the landlord, I find that the tenants have been served with the 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 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 each tenant;
- A copy of a residential tenancy agreement which was signed by the parties on may 4, 2009, indicating a monthly rent of \$1,250.00 due on the first day of the

month and that a security deposit of \$625.00 was paid on May 8, 2009 and a pet deposit of \$200.00 was paid on May 22, 2009;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 12, 2009 with a stated effective vacancy date of November 22, 2009, for \$2,645.00 in unpaid rent due on November 1, 2009;
- Copies of returned cheques dated October 1, 2009 in the sum of \$1,250.00; May 22, 2009 in the sum of \$440.00 and a cheque dated June 5, 2009 in the sum of \$1,250.00 that could not be cashed due to the account having been closed; leaving \$145.00 arrears effective September 24, 2009;
- Notes to the tenants dated September 24, 2009 and November 12, 2009 outlining the total rent arrears.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery to the male tenant on November 12, 2009 at 12:33 pm with a witness present. The Act deems the tenants were served on the day of personal delivery.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days from the date of service.

The landlord's evidence indicates that the tenants did not pay October or November rent in the sum of \$2,500.00 and that they continue to owe \$145.00 from June 2009 arrears. The landlord evidence indicates that the tenants issued the landlord a cheque on November 5, 2009 for the \$145.00 owed, which was non-negotiable; resulting in total arrears in the sum of \$2,645.00.

Analysis

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

The notice is deemed to have been received by the tenants on November 12, 2009.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the Act.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice; November 22, 2009.

Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order for unpaid rent June, October and November rent in the sum of \$2,645.00, and the application fee cost.

I find that the landlord may retain the deposits paid in partial satisfaction of the claim for compensation.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenants 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 **\$2,695.00** comprised of \$2,645.00 rent owed and the \$50.00 fee paid for this application.

I order that the landlord may retain the deposits held of \$825.00 in partial satisfaction of the claim and grant an Order for the balance due of **\$1,870.00**. This Order must be served on the tenants and may be filed in the Provincial Court (Small Claims) 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 03, 2009.

Dispute Resolution Officer