



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

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 and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 23, 2009 the landlord personally served the tenant with the Notice of Direct Request Proceeding. The landlord provided a Proof of Service documents with is initialed by the tenant, acknowledging service. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the day of personal delivery.

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, whether the landlord may retain the deposit and 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.

Rent Payment

The landlord submitted evidence indicating that on October 3, 2009 a 10 Day Notice for Unpaid Rent for \$800.00 due on October 1, 2009 was personally served to the tenant on that date. The landlord evidence indicates that some time between October 3 and the time the landlord made Application for Dispute Resolution on October 19, 2009, the landlord may have received a \$400.00 payment toward the rent owed.

Analysis

I am unable to determine when the partial payment for October rent was paid. If this payment was prior to the effective date of the Notice to End Tenancy, October 13, 2009, then the question of waiver is not an issue. If the tenant made this payment after the effective date of the Notice, then the question of waiver and the intent of the landlord at the time the payment was made is in question.

The landlord has not provided a copy of any receipt issued for this payment or any other evidence that allows me to establish when the \$400.00 payment was made. The landlord has applied for dispute resolution, indicating that by October 19 when the application was dated and October 20, 2009 when the application was submitted, that she wished to proceed with an order of possession. However, in the absence of evidence I cannot assume what intent was expressed by the landlord at the time payment was made by the tenant and if the payment occurred before or after the effective date of the Notice.

In the absence of evidence of the timing of this payment; I find that this Application must be reconvened to a participatory hearing in order to establish the time payment was made and the intent of the landlord at the time the payment was made.

Conclusion

Having found that the landlord has failed to provide evidence establishing the date of rent paid in October, I order that the direct request proceeding be reconvened in accordance with section 74 of the Act. Based on the foregoing, I find that a conference call hearing is required in order to determine the details of the October rent payment and the intent of the landlord at the time payment was made.

Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the tenant within **three (3) days** of receiving this decision in accordance with section 88 of the Act.

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 07, 2009.

Dispute Resolution Officer