



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 January 14, 2010 the landlord served the tenant with the Notice of Direct Request Proceeding via personal delivery at 4:29 p.m. at the rental unit address. Section 90 of the 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 that the tenant has been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

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 1, 2006, indicating a monthly rent of \$491.00 due on or before the first day of the month and that a deposit of \$245.00 was paid on May 15, 2006;
- A copy of a financial statement showing rent payments from what appears to be November 2008 to January, 2010; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 5, 2010 with a stated effective vacancy date of January 15, 2010, for \$1,380.00 in unpaid rent.

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 to the door of the rental unit on January 5, 2010 at 7:00p.m. with the assistant manager present as a witness. The Act deems the tenant was served on January 8, 2010.

The landlord rent payment records indicate that the tenant's rent was increased on June 1, 2009 from \$528.00 to \$548.00 and that to January 2010 the tenant has accrued rent arrears in the sum of \$1,380.00.

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.

The notice is deemed to have been received by the tenant on January 8, 2010.

Section 53(2) of the Act provides:

If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Therefore, the effective date of the Notice is changed to January 18, 2010.

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; January 18, 2010

There is no evidence before me that the landlord has imposed rent increases as required by Part 3 of the Act. The landlord increased the rent in June 2009, but there is no evidence this occurred as required by the Act. As I cannot be confident as to what past rent increases were imposed or if those increases were made as required by the Act, I find that the portion of the Application requesting a monetary Order is dismissed with leave to reapply.

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

The landlord is holding in trust a deposit plus interest in the sum of \$253.73.

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.

The portion of the Application requesting a monetary order is dismissed with leave to reapply.

I order that the landlord may retain \$50.00 from the deposit in compensation for the application fee cost and that the balance of the deposit plus interest in the sum of \$203.73 be disbursed as required by section 38 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: January 21, 2010.

Dispute Resolution Officer