

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 Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 18, 2010 the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the written submissions of the landlord, I find that the tenant has been 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, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

On a Direct request application the landlord is required to submit 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.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent, which includes the direct request explanation.

- Proof of service of the 10 day Notice to End Tenancy as either a registered mail receipt or written receipt signed by the tenant or witnessed by a third-party confirming the notice was served.

On this application the landlord has failed to provide proper proof of service of the 10 day Notice to End Tenancy. The written receipt provided by the applicant has not been signed for by the tenant nor has it been witnessed by a third-party confirming that the notice was served. The landlord is claiming that the tenant signed a copy of the Notice to End Tenancy and has submitted that as his proof of service; however the signature on the Notice to End Tenancy is not sufficiently legible to confirm that it matches the signature of the tenant on the tenancy agreement.

I therefore do not accept the landlords evidence as proof of service of the 10 day Notice to End Tenancy, and will therefore not be issuing any Order of Possession.

I will however proceed with a request for a monetary order.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on August 15, 2008 for a tenancy beginning August 15, 2008 for the monthly rent of \$450.00 due on 1st of the month and which shows that a security deposit of \$225.00 was paid on August 15, 2008; and

Documentary evidence filed by the landlord(s) indicates that the tenant(s) had failed to pay the rent owed for the month of March 2010.

Analysis

I have reviewed all documentary evidence and accept that the tenant has failed to pay the March 2010 rent

Conclusion

The application for an Order of Possession is dismissed with leave to reapply.

However I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of \$500.00 comprised of \$450.00 rent owed and the \$50.00 fee paid by the Landlord(s) for this application. I order that the landlord(s) may retain the deposit and interest held of \$226.28 in partial satisfaction of the claim and grant an order for the balance due of \$273.72. This order must be served on the tenant(s) 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: March 25, 2010.

Dispute Resolution Officer