



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes – OPR, MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act (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. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 4, 2010 at 1:00 p.m. the landlord served the tenant with the Notice of Direct Request Proceeding personally.

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 and to a monetary order for unpaid rent, pursuant to sections 46, 55, 67, and 72 of the *Residential Tenancy Act (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 document entitled "Standard Form Rental Agreement" which was signed by two unidentified parties for the monthly rent of either \$550.00 or \$650.00 on the 1st of the month. The document has no other standard tenancy agreement terms and identifies the same person to be "management" and "resident", nothing in the document indicates who the landlord or tenant is;
- A copy of a rental application that identifies the named tenant but it does not identify where the tenant is applying to rent;
- Several hand written documents that indicate nonpayment of rent over the course of several months, a charge for insufficient funds, and a security deposit indicating a total owed of \$1,300.00; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued by a manufactured home park, citing the *Residential Tenancy Act* not the

Manufactured Home Park Tenancy Act as the relevant legislation on July 10, 2010 with an effective vacancy date of July 20, 2010 due to \$800.00 in unpaid rent including a \$25.00 charge for insufficient funds.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of July 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent personally on July 10, 2010. The landlord has provided written confirmation that this service was acknowledged by the tenant and was witnessed by a third party.

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.

Analysis

The landlord's application submitted lists the name of the landlord as a numbered company; the 10 Day Notice to End Tenancy was issued naming a manufactured home park as the landlord; and the "rental agreement" lists a person name as "management". Further, the "rental agreement" does not identify anyone as a tenant.

In the landlord's submission it is unclear who the landlord is or if a tenancy agreement exists and if it does exist whether it falls under the jurisdiction of the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act*. It is also unclear who the tenant is, as such I find I am not able to determine that a tenancy exists.

In addition, I find I am unable to determine the amount of monthly rent that is owed as the document submitted is unclear whether rent is \$550.00 or \$650.00. In the 10 Day Notice to End Tenancy, the amount noted as owed to the landlord is \$800.00, including \$25.00 for charges for insufficient funds. From the rest of the landlord's submission, it appears that this amount includes an unpaid security deposit.

As it is unclear whether the jurisdiction of this matter is under the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act* I find I cannot determine whether or not the landlord is allowed to request a security deposit.

Even if the tenancy is governed under the *Residential Tenancy Act* and the landlord is entitled to request a security deposit, the payment of a security deposit cannot be included in the calculation of any rental arrears and used as justification to end a tenancy for unpaid rent.

The same is true of charges for insufficient funds, if the landlord charges NSF fees they cannot be used in the calculation of rental arrears and in fact the landlord may only charge NSF fees if it is included in the tenancy agreement. As noted above the "rental agreement" does not include most standard terms and does not contain any clause or term allowing the landlord to charge any NSF fees.

As a result, I am find I am unable to determine if the 10 Day Notice to End Tenancy for Unpaid rent is of any force or effect.

Conclusion

Based on my findings above, I dismiss the landlord's application in its entirety without leave to reapply.

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: September 15, 2010.

Dispute Resolution Officer