



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded 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 based on unpaid rent, a monetary Order for unpaid rent and recovery of the filing fee for this application.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 18, 2011, the landlord sent both of the Respondents identified in the application the Notice of Direct Request Proceeding by registered mail.

Based on the written submissions of the landlord, I find that the Respondents have been duly served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*? Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*? Is the landlord entitled to recover the filing fee for this application from the Respondents?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding served to the Respondents;
- A copy of a residential tenancy agreement which was signed by the landlord and Tenant RCS on January 4, 2011, indicating a monthly rent of \$700.00 due on the 1st day of the month, but which identified only Tenant RCS as the tenant; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the door of the rental unit on October 25, 2011, with a stated effective vacancy date of November 4, 2011, for \$1,400.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicate that the Respondents failed to pay all outstanding rent was served by posting the 10 Day Notice on the door of the rental unit at 10:05 a.m. on October 25, 2011. In accordance with section 88 of the *Act*, the Respondents were served with this 10 Day Notice on October 28, 2011.

The Notice states that the Respondents had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The Respondents 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 Respondents have been served with notice to end tenancy as declared by the landlords.

I first note that the residential tenancy agreement does not include Respondent JM as one of the tenants, nor has the landlord provided any evidence that she signed a tenancy agreement with the landlord. As such, any monetary Order requested by the landlord can only be directed at his legal tenant, Tenant RCS.

On the landlord's 10 Day Notice, the landlord cited \$1,400.00, as owing for rent due on September 1, 2011. The landlord's application for dispute resolution issued on November 15, 2011, sought a monetary Order of \$1,250.00 for unpaid rent owing for October 2011 (in the amount of \$550.00), and November 2011 (in the amount of \$750.00). The landlord provided no details of payments received from this tenancy. The landlord's evidence does not inform as to whether the amount identified on the 10 Day Notice as owing and due on September 1, 2011 was paid in part or in full, or the basis on which any payment was received. It would appear that at some time rent identified as owing and due on September 1, 2011, may have been paid, but the landlord's application for dispute resolution identified rent owing for October and November 2011 as the basis for the monetary Order requested.

The landlord's application also requested recovery of the landlord's filing fee, which is beyond the scope of a direct request proceeding.

Based on the deficiencies outlined above in this application, I dismiss the landlord's application for dispute resolution with leave to reapply. A portion of the remedy sought in this application extends beyond the scope of a direct request hearing and the rent owing on September 1, 2011 appears to differ from the unpaid rent identified as owing in the landlord's application for dispute resolution for unpaid rent in October and November 2011. Under these circumstances, I find that the apparent inconsistencies between the 10 Day Notice and the landlord's application for dispute resolution can only be considered by way of a participatory hearing. If the landlord initiates a new application for dispute resolution and chooses to include Respondent JM in this application, the landlord must demonstrate that she is a tenant under the *Act*.

Conclusion

I dismiss the landlord's application with leave to reapply. I find that any application that the landlord submits with respect to the 10 Day Notice of October 25, 2011 needs to be considered by way of a participatory hearing.

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: November 25, 2011

Residential Tenancy Branch