

DECISION AND REASONS

Dispute Codes

OPR

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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 29, 2009 the landlord personally served the tenant with the Notice of Direct Request Proceeding at the rental unit address. The landlord supplied a Proof of Service document, signed by the tenant, acknowledging service of the Proceeding Package. The landlord received the Direct Request Proceeding package on May 28, 2009 and initiated service on the next day. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the day it is personally served.

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, pursuant to sections 55 of the *Residential Tenancy Act (Act)*. I have reviewed all documentary evidence submitted by the landlord.

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 January 30, 2004 indicating \$375.00 per month rent due on the first day of the month
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 12, 2009 with an effective vacancy date of May 25, 2009 for \$375.00 in unpaid rent due on May 1, 2009

Documentary evidence filed by the landlord indicates that the tenant was personally served a 10 Day Notice to End Tenancy for Unpaid Rent on May 12, 2009 at 4:35 p.m. at the rental unit. The landlord provided a Proof of Service document which is signed by the landlord agent who served the Notice. 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

I accept that the tenant has been served with notice to end tenancy effective on May 12, 2009.

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; May 25, 2009. Therefore, I have issued an Order of possession to the landlord.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The landlord has not applied to retain any deposit that may have been paid by the tenant. Any deposit paid is held in trust by the landlord and must be disbursed as determined by section 38 of the Act.

Dated June 10, 2009.

Dispute Resolution Officer