



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR

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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 21, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding via posting the documents to the door of the rental unit at 7:30 pm. Section 90 of the Act determines that a document is deemed to have been served on the third day after posting.

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

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent, pursuant to section 55 of the 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 residential tenancy agreement which was signed by the parties on July 8, 2009, indicating a monthly rent of \$875.00 due on the first day of the month and that a deposit of \$400.00 was paid on July 15, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 7, 2009 with a stated effective vacancy date of October 7, 2009, for \$875.00 in unpaid rent due on October 1, 2009.

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



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personal delivery on October 7, 2009 at 6:45 pm. The Act deems the tenant was served on the day of personal delivery.

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 October 7, 2009.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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; October 17, 2009.

Therefore, I find that the landlord is entitled to an Order of possession.

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 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*.

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 02, 2009.

Dispute Resolution Officer