



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR, FF

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 and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 27, 2010 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a Canada Post receipt and tracking number as evidence of service to the tenant's mailing address. Section 90 of the Act determines that a document is deemed to have been served on the fifth day after mailing.

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

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to filing fee costs?

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 April 29, 2009, indicating a monthly rent of \$2,300.00 due on the first day of the month and that a deposit of \$1,150.00 was paid on April 30, 2009;

- A copy of a cheque issued to the landlord by the tenant on January 1, 2010, in the sum of \$2,300.00 which was returned by the bank on January 7, 2010, indicating "payment stopped; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 11, 2010, with a stated effective vacancy date of January 19, 2010, for \$2,300.00 in unpaid rent due January 1, 2010.

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 posting to the door on January 11, 2010. The Act deems the tenant was served on January 14, 2010.

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.

The Application indicates that on January 9, 2010 the tenant paid \$735.00, leaving rent arrears in the sum of \$1565.00.

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 January 14, 2010.

Section 53(2) of the Act provides:

If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Therefore, the effective date of the Notice is changed to January 24, 2010.

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; January 24, 2010.

Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order for unpaid January rent, and the application fee cost.

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.

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$1,615.00** comprised of \$1,565.00 rent owed and the \$50.00 fee paid for this application and I grant an Order in that amount. This Order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The landlord has not applied to retain any deposit that is held in trust by the landlord. Any deposit held in trust by the landlord must be disbursed as required 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: February 08, 2010.

Dispute Resolution Officer