



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 February 3, 2010, at 4:57 p.m. the female tenant was personally by the landlord with the Notice of Direct Request Proceeding. The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 4, 2010, the landlord served the male tenant by registered mail sent to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service. Section 90 of the Act determines that a document is deemed to have been served on the fifth day after mailing and on the same day as personally delivery.

Based on the written submissions of the landlord, I find that the tenants have each 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 each tenant;

- A copy of a residential tenancy agreement which was signed by the parties on April 1, 2009, indicating a monthly rent of \$900.00 due on the first day of the month and that a deposit of \$450.00 was paid on April 1, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 7, 2010, with a stated effective vacancy date of January 17, 2010, for \$925.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant have failed to pay rent owed and was personally served the female tenant the 10 Day Notice to End Tenancy for Unpaid Rent on January 7, 2010, at 3:11 p.m. by the landlord, with a witness present. The Act deems the tenant was served on the day of personal delivery and that the male tenant has been served via an adult with whom he resides.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants 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 tenants have been served with notice to end tenancy as declared by the landlord.

The notice is deemed to have been received by the tenants on January 7, 2010.

I accept the evidence before me that the tenants have 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 tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

The Application indicates that the tenants owe \$425.00 in unpaid January 2010 rent.

Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order for unpaid 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 tenants 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 **\$475.00** comprised of \$425.00 rent owed and the \$50.00 fee paid for this application.

Any deposit held in trust by the landlord must be disbursed as provided 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 15, 2010.

Dispute Resolution Officer