



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNSD, 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 an order to retain the security deposit in partial satisfaction of the claim.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 16, 2010 the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit address. The landlord provided a Canada Post receipts and tracking numbers 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

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

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

May the landlord retain the deposit paid?

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 November 20, 2009, indicating a monthly rent of \$700.00 due on the first day of the month and that a deposit of \$350.00 was paid on November 20, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 6, 2010, with a stated effective vacancy date of February 19, 2010, for \$700.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant's have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door of the rental unit on February 6, 2010, at 4:45 p.m. with a witness present. The Act deems the tenants were served on February 9, 2010.

The Notice states that the tenants 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 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 February 9, 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 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; February 19, 2010.

Therefore, I find that the landlord is entitled to an Order of possession, filing fee costs and that the landlord may retain the deposit paid in satisfaction of the monetary claim for \$350.00 of the \$700.00 February rent owed.

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 order that the landlord may retain the deposit and interest held of \$350.00 in satisfaction of the claim made for unpaid February 2010 rent. I have issued a monetary Order in the sum of \$50.00 for filing fee costs. This Order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

I find that the landlord is at liberty to make further Application in relation to the balance of February rent owed.

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 24, 2010.

Dispute Resolution Officer