



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes - OPR, MNR, MNSD, FF

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 28, 2010 the landlord served the tenant with the Notice of Direct Request Proceeding by posting it on the tenant's rental unit door at 10:03 a.m.

Section 89 of the *Act* states an Application for Dispute Resolution, when required to be given to one party by another must be given in one of the following ways:

1. Leaving a copy with the person;
2. By sending a copy by registered mail to where the tenant resides; or
3. By sending a copy by registered mail to a forwarding address provided by the tenant;

If the application by a landlord is seeking only an order of possession under Section 55 of the *Act* the acceptable methods of service also include leaving a copy at the residence with an adult who apparently resides with the tenant or by attaching a copy to a door or other conspicuous place at the address at which the tenant resides.

Based on the written submissions of the landlord, I find that the tenant has been served with the Dispute Resolution Direct Request Proceeding documents for an order of possession. I also find the tenant has not been served in accordance with Section 89 of the *Act* for the Direct Request Proceeding documents for a monetary order.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (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 October 2, 2008 for a month to month tenancy beginning on November 1, 2008 for the monthly rent of \$964.00 due on the last day of the month and a security deposit of \$482.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 11, 2010 with an effective vacancy date of January 23, 2010 due to \$362.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of January, 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally to the tenant on January 11, 2010 at 3:15 p.m. The landlord has provided written confirmation that this service was acknowledged in writing by the tenant.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The landlord submitted that the tenant paid \$170.00 towards the unpaid rent on January 22, 2010 but that \$192.00 remains outstanding. The tenant did not apply to dispute the Notice to End Tenancy within five days.

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 11, 2010 and the effective date of the notice is January 23, 2010. I accept the evidence before me that the tenant failed to pay the full 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.

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 tenant and may be filed in the Supreme Court and enforced as an order of that Court.

As the landlord has failed to prove service of hearing documents is in compliance with Section 89 of the Act for the monetary order request, I dismiss this part of the landlord's application with leave to reapply.

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 11, 2010.

Dispute Resolution Officer