



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 Act, and dealt with an Application for Dispute Resolution by the landlord for an order of possession due to unpaid rent.

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 the tenant with the Notice of Direct Request Proceeding personally.

In addition, the tenant has submitted evidence to be considered in this proceeding.

Based on the written submissions of the landlord and the submission of evidence from the tenant, I find that the tenant has been served with the Dispute Resolution 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 sections 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 July 4, 2008 for a month to month tenancy beginning on July 1, 2008 for the market monthly rent of \$845.00 due on the 1st of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 3, 2010 with an effective vacancy date of February 13, 2010 due to \$210.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of February, 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 February 4, 2010 at 5:00 p.m. The landlord has provided written confirmation that this service was witnessed by a third party.

The landlord had indicated in the Application for Dispute Resolution that the tenant's portion of the rent is \$210.00 per month and the subsidized portion is \$635.00. The documentation submitted by the tenant indicates the tenant's portion of the rent is \$360.00 per month and the subsidized portion is \$485.00.

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.

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 February 4, 2010 and the effective date of the notice is amended to February 14, 2010, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Despite the tenant's submission that the subsidized portion is different than that identified by the landlord, I find this information has no relevance to the facts of this dispute that the tenant failed to pay \$210.00 in rent to the landlord on February 1, 2010 or within 5 days of receipt of the 10 Day Notice to End Tenancy.

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.

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 25, 2010.

Dispute Resolution Officer