

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 _____ the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a Canada Post receipt, tracking number as evidence of service for each tenant. 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?

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 February 20, 2003, indicating a monthly rent of \$950.00 due on the first day of the month and that a deposit of \$475.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 24, 2010, with a stated effective vacancy date of May 6, 2010, for \$1,160.00 in unpaid rent due April 1, 2010.

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 on April 24, 2010, at 2:50 p.m., with a witness present. The Act deems the tenants were served on April 27, 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's did not apply to dispute the Notice to End Tenancy within five days from the date of service.

The Application details indicate that the tenants did not pay March rent and then paid only \$740.00 in April. The Application indicates that the tenants missed 2 rent payments in 2009 and that they make purchases and deduct the costs from rent without landlord consent. The landlord is claiming unpaid rent for March and April in the sum of \$1,160.00.

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 April 27, 2010.

I am unable to determine on what date the tenants paid rent in April; however, the tenants had until May 2, 2010 to pay the outstanding rent owed in full. The landlord applied for dispute resolution on May 4, 2010 and there is no indication that any rent was paid between April 30 and May 4, 2010. Therefore, I have determined that the tenancy has not been reinstated, as the May 4 Application includes reference to only one partial rent payment made some time in April.

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.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to May 7, 2010.

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; May 7, 2010.

Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order for unpaid rent for March and April in the sum of \$1,160.00, 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 **\$1,210.00** comprised of \$1,160.00 March and April, 2010, rent owed and the \$50.00 fee paid for this application.

The landlord has not applied to retain any deposit that may have been paid by the tenants. Any deposit held in trust by the landlord must be disbursed as required by 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: May 10, 2010.

Dispute Resolution Officer