

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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 22, 2010 at 9:50 a.m. the landlord served the tenant with the Notice of Direct Request Proceeding personally.

Based on the written submissions of the landlord, I find that the tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issue to be decided is whether the landlord is entitled to an order of possession for unpaid rent, pursuant to sections 46, 55, and 67 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 June 11, 2002 for a month to month tenancy beginning on July 15, 2002 for the current monthly rent of \$860.00 due on the 1st of the month and a security deposit of \$405.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on May 7, 2010 with an effective vacancy date of May 17, 2010 due to \$360.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of May 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served to the tenant personally on May 7, 2010. The landlord has provided written confirmation that this service was witnessed by a third party and that the tenant signed a Proof of Service acknowledging receipt of the notice.

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 the outstanding rent on May 13, 2010. 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 May 7, 2010 and the effective date of the notice is May 17, 2010. 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*, but instead paid the rent on the 6th day after receipt of the notice.

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: June 02, 2010.

Dispute Resolution Officer