

DECISION

Dispute Codes – OPR, MNR

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 June 4, 2010 at 4:10 p.m. the landlord served the tenant with the Notice of Direct Request Proceeding by posting it to the rental unit door. Section 90 of the *Act* states a document attached to a door is deemed served on the 3rd day after it is posted.

When a party files an Application for Dispute Resolution for a monetary order Section 89 of the *Act* requires that party to serve the other party with notice of the hearing and allows the party to do so by:

1. Leaving a copy with the person;
2. Sending a copy by registered mail to an address at which the person resides; or
3. Sending a copy by registered mail to a forwarding address provided by the tenant.

In the case of a request for an order of possession Section 89 allows the landlord to also serve the notice of the hearing by posting it to the door of the rental unit.

Based on the written submissions of the landlord, I find that the tenant has been served with the Dispute Resolution Direct Request Proceeding documents in accordance with the *Act* for the request for an order of possession.

Based on the submission from the landlord stating the tenant was served with the notice of the Direct Request proceeding by posting the notice to the tenant's door, I find the landlord has not served the tenant in accordance with Section 89 for a monetary order. I dismiss this portion of the landlord's application with leave to reapply.

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 *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 November 2, 2009 for a 1 year fixed term tenancy beginning on November 1, 2009 for the monthly rent of \$800.00 due on the 1st of the month and a security deposit of \$400.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on May 14, 2010 with an effective vacancy date of May 25, 2010 due to \$800.00 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 posted to the rental unit door on May 14, 2010 at 7:30 p.m. The landlord provided written confirmation that this service was witnessed by a third party

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 May 17, 2010 and the effective date of the notice is amended to May 27, 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*.

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 10, 2010.

Dispute Resolution Officer