

DECISION

Dispute Codes OPR, & MNR

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 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 September 21, 2010 the landlord served the tenants with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

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

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on August 13, 2010 for a tenancy beginning August 15, 2010 for the monthly rent of \$1,300.00 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, September 06, 2010 with an effective vacancy date of September 17, 2010 due to \$1,350.00 in unpaid rent.

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Documentary evidence filed by the landlord(s) indicates that the tenant(s) had failed to pay the full rent owed for the month of September, 2010 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent which was posted on the door of the tenant's rental unit on September 06, 2010 and therefore is deemed served three days later.

The Notice states that the tenant(s) 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.

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 tenant(s) on September 09, 2010 and the effective date of the notice is amended to September 19, 2010 pursuant to section 53 of the *Act*. However, with respect to the amount of the landlord's monetary claim of \$1,350.00; I find that the landlord has only established a claim due to non-payment of rent for the sum of \$1,300.00 which is the amount indicated on the tenancy agreement for the amount of rent each month. The landlord has not provided any evidence to support the claim that the tenant owes an additional \$50.00 for failing to all the rent due for August, 2010. Therefore I accept the evidence before me that the tenants have failed to pay the rent owed for September, 2010 within the 5 days granted under section 46 (4) of the *Act*.

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.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant(s)**. This order must be served on the tenant(s) and may be filed in the Supreme Court and enforced as an order of that Court.

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I find that the landlord is entitled to monetary compensation pursuant to section 67 in the amount of **\$1,300.00** comprised for rent owed for September, 2010. This order must be served on the tenant(s) and may be filed in the Provincial Court (Small Claims) 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: October 01, 2010.

Dispute Resolution Officer