



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 15, 2010 the landlord served the tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the written submissions of the landlord, I find that the tenants have 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 and to a monetary order 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 tenants;
- A copy of a residential tenancy agreement which was signed by the parties on September 5, 2007 for a month to month tenancy beginning on September 1, 2007 for the monthly rent of \$1,200.00 due on the 1st of the month and a security deposit of \$600.00 and a pet damage deposit of \$600.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on October 2, 2010 with an effective vacancy date of October 15, 2010 due to \$1,292.10 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the month of October 2010 and that the tenants were served a 10 Day

Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on October 2, 2010 at 2:04 p.m. and that this service was witnessed by a third party.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants 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 tenants on October 5, 2010 and the effective date of the notice is October 15, 2010. I accept the evidence before me that the tenants 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 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.

As to the matter of the amount of rent owed to the landlord the landlord has failed to provide an explanation as to why the amount of rent owed on October 1, 2010 was \$1,292.10 as the tenancy agreement stipulates that rent is \$1,200.00. As such, I find I cannot determine the amount owed to the landlord and therefore cannot determine the amount of a monetary order for the landlord without conducting a participatory hearing.

Conclusion

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

As noted above, I order this proceeding be reconvened as a participatory hearing to deal solely with the amount of rent owed to the landlord. I include in the landlord's decision copies of the Notice of Reconvened Hearing that the landlord must serve on the tenant within **3 days** of receipt of this decision.

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 21, 2010.

Dispute Resolution Officer