



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR MNR

Introduction

This hearing proceeded 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 for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 22, 2010, at 4:45 p.m. the Landlord served the Tenant with the Notice of Direct Request Proceeding by posting it to the Tenant's door.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to section 55 of the *Residential Tenancy Act (Act)*?

Is the Landlord entitled to a Monetary Order for unpaid rent and to keep the security deposit pursuant to section 67 of the *Residential Tenancy Act (Act)*?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
and

- A copy of a residential tenancy agreement which was signed by the parties on June 11, 2010, for a fixed term tenancy beginning July 1, 2010 and switching to a month to month tenancy after June 30, 2011. Rent of \$775.00 is due on 1st of the month. A deposit of \$387.50 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, October 5, 2010, with an effective vacancy date of October 15, 2010 due to \$1,299.67 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on October 5, 2010 at 11:35 a.m. when it was posted to the Tenant's door.

Analysis

Section 89 of the *Residential Tenancy Act* determines the method of service for documents. The Landlord has applied for an order of possession and a monetary Order which requires that the Landlord serve the respondent Tenant with the notice for dispute resolution either in person or by registered mail to an address where the Tenant resides, in accordance with section 89 (1) of the Act.

In this case the Landlord served the Tenant with the Notice of Direct Request by posting it on the Tenant's door. Section 89(2)(d) provides that if the notice of direct request application was served by attaching a copy to a door, then service is met only for the request of an Order of Possession. It is also noted on the proof of service form not to use this method of service if seeking a monetary order.

Therefore, I find that the service requirements for the request for a monetary order have not been met and I hereby dismiss the Landlord's request for a monetary order, with leave to reapply. The following decision will only consider the Landlord's request for an Order of Possession.

Order of Possession - 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 October 8, 2010, three days after it was posted to the door, and the effective date of the notice is October 18, 2010 pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenant has 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 and I hereby approve the Landlord's request for an Order of Possession.

Conclusion

I HEREBY 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 Respondent 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: November 15, 2010.

Dispute Resolution Officer