



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 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 November 04, 2010 the landlord served the tenant 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 tenant has 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 tenant;
- A copy of a residential tenancy agreement which was signed by the parties on June 29, 2001 for a tenancy beginning July 01, 2001 for the monthly rent of \$1,700.00 due on the 1st of the month; and



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- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, October 21, 2010 with an effective vacancy date of October 31, 2010 due to \$2,700.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the full rent owed for May and October, 2010 of \$2,700.00 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent which was posted on the door of the tenants rental unit on October 21, 2010 and therefore is deemed served three days later.

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 October 24, 2010 and the effective date of the notice is amended to November 03, 2010 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenant has failed to pay rent owed in full within the 5 days granted under section 46 (4) of the *Act*. However, the tenancy agreement indicates rent is \$1,700.00 per month whereas the landlord's application indicates rent payable is \$1,850.00 starting January 01, 2010. Where rent has been legally increased since the tenancy commenced it is necessary for the landlord to provide evidence of such rent increases to substantiate rent owing is greater than that indicated in the tenancy agreement.

However the landlords' application only seeks to recover the sum of \$2,700.00 in unpaid rent for May and October, 2010 which is less than the amount of rent indicated as owed



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by the landlord at either the increased rent of \$1,850.00 per month or the amount owed as indicated by the tenancy agreement at \$1,700.00 per month. Therefore, I have allowed the landlords application for a Monetary Order for \$2,700.00

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(s) and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to section 67 in the amount of **\$2,700.00** comprised for rent owed. This order must be served on the tenant 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: November 15, 2010.

Dispute Resolution Officer