



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* (the "Act"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 29, 2010, at 3:35 p.m. The landlord personally served each tenant with the Notice of Direct Request Proceeding at the rental unit address. Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

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

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each tenant;
- A copy of a residential tenancy agreement which was signed by the parties on May 3, 2009, indicating a monthly rent of \$1,200.00 due each month on the first day of the rental period which falls on an undetermined date of the month;
- A copy of an October 22, 2010, note to the tenants in relation to unpaid rent; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 15, 2010, with a stated effective vacancy date of November 25, 2010, for \$3,040.00 in unpaid rent due November 1, 2010.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery on November 15, 2010, to the male tenant at 4:30 p.m. at the rental unit. The Act deems the tenants were served on the day of personal delivery.

The Notice states that the tenants 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 from the date of service.

. A handwritten ledger submitted as evidence indicated that since September 2010, the tenants have paid \$560.00 of the total rent owed in the sum of \$3,600.00.

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 November 15, 2010.

I accept the evidence before me that the tenants have failed to pay the rent owed in full with in the 5 days granted under section 46 (4) of the *Act*; however, I am unable to determine what the due date of the rent is as the tenancy agreement does not indicate the day in the month rent is due.

The matter of a rent due date is not critical in this case, as the tenants have not paid rent owed since September, 2010. As the date rent was due has passed, as the rent was not paid on any day of those months, I find that the landlord is entitled to compensation for unpaid rent in the sum of \$1,140.00 for September, \$700.00 for October and \$1,200.00 for November 2010, totaling.

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; November 25, 2010.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid rent from September to November, 2010, inclusive.

Conclusion

I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of Possession effective **two days after service** on the tenants and the Order 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 section 67 in the amount of \$3,040.00 rent owed from September to November, 2010, inclusive and I grant an Order in that amount. This Order must be served on the tenants 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: December 06, 2010.

Dispute Resolution Officer