



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 January 12, 2011 the Landlord served the Tenant via registered mail. Canada Post receipts were submitted in the Landlord's evidence. Based on the written submissions of the Landlord, I find that the Tenant has been served with the Dispute Resolution Direct Request Proceeding documents in accordance with Section 89 of the Act.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy 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;
- A copy of a residential tenancy agreement which was signed by all parties on December 8, 2009, for a fixed term tenancy agreement beginning December 1, 2009, and set to switch to a month to month tenancy after November 30, 2010,

for the monthly rent of \$900.00 due on the first day of the month and a security deposit of \$450.00 was paid on December 8, 2009 and a pet deposit of \$450.00 was paid on October 1, 2010 and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 2, 2011 with an effective vacancy date of January 12, 2011 due to \$927.00 in unpaid rent; and
- A notation on the application which indicates the 10 Day Notice to End Tenancy show unpaid rent in the amount of \$927.00 as the Tenant was previously served notice of a rent increase which was effective January 1, 2011 and the Landlord is now seeking a monetary order for the original rental amount of \$900.00.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on January 2, 2011 at 2:40 p.m. when it was served personally to the Tenant in the presence of a witness.

Analysis

The Landlord submitted a copy of the proof of service of the Notice of Direct Request form which lists the Landlord's company name after the word "I" and before the word served. The proof of service form is a declaration made by the person who conducted the service and that person is required to complete and sign the document. The Agent for the Landlord should be printing their full first and last name as the person who conducts the service "for" the Landlord and then sign the document. In this case I can determine that the same person signed each document and the tenancy agreement as the agent for the Landlord, therefore I find the Tenant has been sufficiently served this time. However, the Landlord's Agent is instructed to ensure their full first and last names are printed and legible on all documents in the future.

Order of Possession - 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 on January 2, 2011, and the effective date of the notice is January 12, 2011, 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 grant the Landlord an Order of Possession.

Monetary Order – The evidence supports that the Tenant has failed to pay the January 1, 2011 rent in violation of section 26 of the *Act* which provides that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order as follows:

Unpaid Rent which was due January 1, 2011	\$900.00
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Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

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 Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$900.00**. The order must be

served on the respondent Tenant and is enforceable through the Provincial Court 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: January 21, 2011.

Residential Tenancy Branch