



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 February 15, 2011, the landlord served each tenant with the Notice of Direct Request Proceeding via one registered mail package sent to the rental unit. The landlord provided a Canada Post receipt, tracking number as evidence of service. Section 90 of the Act determines that a document is deemed to have been served on the fifth day after mailing.

As each tenant was not served with Notice of this Direct Request Proceeding, as required by section 89(1) of the Act, I find that the tenants have been served with Notice, for the purposes of an application requesting an Order of possession, pursuant to section 89(2) of the Act.

Therefore, as the tenants have not been served with notice of this proceeding, as required when making a monetary claim, I find that the monetary portion of the application is dismissed with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

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 female tenant only on September 27, 2010, indicating a monthly rent of \$1,300.00 due by the first day of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 4, 2011, with a stated effective vacancy date of February 15, 2011, for \$4,000.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant's have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting to the tenant's door on February 4, 2011, at 4 p.m. with a witness present. The Act deems the tenants were served on February 7, 2011.

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's did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence and find that the male named as a respondent was not a signatory to the tenancy agreement. Therefore, from the evidence before me I find that the male named as a respondent is an occupant.

I 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 February 7, 2011.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to February 17, 2011.

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; February 17, 2011.

Therefore, I find that the landlord is entitled to an Order of possession.

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 tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The monetary claim is dismissed with leave to reapply.

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: February 22, 2011.

Residential Tenancy Branch