

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 16, 2011, the landlord personally served the tenant with the Notice of Direct Request Proceeding at 2:15 p.m. 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 tenant has 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 the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on March 1, 2006, indicating a monthly rent of \$668.00 due before the first day of the month;
- A copy of a November 1, 2010, letter to the tenant in relation to rent owed and a document outlining rent payments to be made; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 3, 2011, with a stated effective vacancy date of February 28, 2011, for \$1,322.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting to the tenant's door on February 3, 2011, at 3:03 p.m. with the caretaker present as a witness. The Act deems the tenant was served on February 6, 2011.

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 from the date of service.

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 February 6, 2011.

I accept the evidence before me that the tenant has failed to pay some rent owed in full within the 5 days granted under section 46 (4) of the Act. However, the tenancy agreement submitted indicated rent owed in the sum of \$668.00. The landlord did not submit evidence of any increase in rent given or allowed, as provided by the Act, nor has the landlord provided a detailed calculation of the monetary claim made. The application indicated the tenant was in arrears in the sum of \$533.00 and did not pay February rent in the sum of \$789.00; information that was not supported by evidence.

As I am unable to determine, from the evidence before me, what the monthly rent owed is, or the months that the arrears were created, I find that the monetary portion of this application is dismissed.

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; as there is no evidence before me that the tenant paid rent or disputed the Notice.

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.

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 17, 2011.

Residential Tenancy Branch