



Dispute Resolution Services

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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 March 10, 2011, the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a Canada Post receipt and 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.

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 December 8, 2010, indicating a monthly rent of \$1,550.00 due on the 1st day of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on March 2, 2011, with a stated effective vacancy date of March 12, 2011, for \$1,550.00 in unpaid March, 2011, rent.

Documentary evidence filed by the landlord indicates that the tenant's have failed to pay rent owed for February and March, 2011, and were served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery to the female tenant at the rental unit on March 2, 2011, at 6:45 p.m. with a witness present. The Act deems the tenants were served on March 2, 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.

The application included a claim for unpaid rent in the sum of \$1,550.00. The details of the dispute section of the application indicated that rent was not paid in February or March; but the total amount claimed on the March 9, 2011, application requested compensation equivalent to 1 month's rent.

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 March 2, 2011.

I accept the evidence before me that the tenants have failed to pay the March, 2011, rent owed in full with in the 5 days granted under section 46 (4) of the *Act*.

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; March 12, 2011.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid March 2011, rent owed in the sum of \$1,550.00.

I have issued a monetary Order for March only, as I found the application confusing; it indicated February rent was owed, but claimed only 1 month's rent. Further, the 10 Day Notice issued on March 2, 2011, did not include any rent owed for February. If the tenants have not paid February 2011, rent owed, the landlord is at liberty to submit an application requesting a monetary Order.

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 \$1,550.00 for March, 2011, rent owed 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.

The landlord is at liberty to submit an application for any unpaid February, 2011, rent.

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: March 23, 2011.

Residential Tenancy Branch