



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 Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 24, 2011 the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the written submissions of the landlord, I find that the tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 46, 55, & 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on January 28, 2011 for a tenancy beginning February 1, 2011 for the monthly rent of \$750.00 due on 1st of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, February 7, 2011 with an effective vacancy date of February 17, 2011 due to \$879.00 in unpaid rent.

Documentary evidence filed by the landlord(s) indicates that the tenant(s) had failed to pay the rent owed for the month of February 2011 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent which was posted on the door of the tenant's rental unit on February 7, 2011 and therefore is deemed served three days later.

The Notice states that the tenant(s) 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.

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(s) on February 10, 2011 and the effective date of the notice is amended to February 20, 2011 pursuant to section 53 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.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant(s)**. This order must be served on the tenant(s) and 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 \$750.00 comprised outstanding February 2011 rent. This order must be served on the tenant(s) and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The applicant had requested \$879.00 in outstanding rent, however the tenancy agreement states that rent is \$750.00 per month and the landlord has given no explanation for the discrepancy. Therefore I have only allow the \$750.00 and the remainder of 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: March 10, 2011.

Residential Tenancy Branch