



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

INTERIM DECISION

Dispute Codes

OPR, MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 07, 2011 the Landlord served the Tenant with the initials "C.D." with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that a package was mailed to this Tenant at the rental unit. Based on the written submissions of the Landlord, I find this Tenant has been served with the Dispute Resolution Direct Request Proceeding document. Section 90 of the Act stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed which, in these circumstances, is March 12, 2011.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 07, 2011 the Landlord served the Tenant with the initials "S.W." with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that a package was mailed to this Tenant at the rental unit. Based on the written submissions of the Landlord, I find this Tenant has been served with the Dispute Resolution Direct Request Proceeding document. Section 90 of the Act stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed which, in these circumstances, is March 12, 2011.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent, pursuant to section 55 of the *Act*.

Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant.

- A copy of a residential tenancy agreement which appears to be signed by both Tenants that indicates that the tenancy began on November 17, 2009 and that the rent of \$1,200.00 is due on the first day of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by the Landlord and is dated January 27, 2011, which declares that the Tenants must vacate the rental unit by February 23, 2011 as they have failed to pay rent in the amount of \$1,200.00 that was due on January 01, 2011. The Notice declares that the tenancy will end unless the Tenants pay the rent within five days of receiving the Notice or submit an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of a signed Proof of Service of the 10 Day Notice to End Tenancy, in which the Landlord declared that the Notice to End Tenancy was mailed, via registered mail, on January 27, 2011.
- A Canada Post receipt that documents a package was mailed to the rental unit on January 27, 2011.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was sent by registered mail on January 27, 2011

In the Application for Dispute Resolution, the Landlord does not state whether rent from January is still outstanding nor is the Landlord making a monetary claim.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants entered into a tenancy agreement that required the Tenants to pay monthly rent of \$1,200.00 on the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants had not paid rent for January of 2011 by January 01, 2011. On the basis of the information provided I am unable to determine whether the outstanding rent from January was paid.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was mailed to the Tenants on January 27, 2011, which is deemed to have been received on February 01, 2011. On the basis of the information provided I am unable to determine whether the Tenants paid the outstanding rent from January within five days of receiving the Notice to End Tenancy. As this Notice to End Tenancy has no effect if the Tenants paid the outstanding rent within five days of receiving the Notice to End Tenancy, I find that I am unable to determine whether the Landlord is entitled to an Order of Possession.

Conclusion

I order that the direct request proceeding be reconvened in accordance with section 74 of the Act. I find that a conference call hearing is required in order to determine whether the Tenants paid the outstanding rent within five days of receiving the Notice to End Tenancy in the mail. Notices of Reconvened Hearing are enclosed with this decision for the Landlord. A copy of the Notice of Reconvened Hearing, this Interim Decision, the Application for Dispute Resolution, and any evidence that will be introduced at the hearing by the Landlord must be served upon Tenant, in accordance with section 88 of the *Act*, within **three (3) days** of receiving this decision.

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 15, 2011.

Residential Tenancy Branch