



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR,

Introduction

This hearing proceeded 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 for rent owed.

Preliminary Matter

Evidence indicates that the landlord received the Direct Request Proceeding package on February 21, 2011 and submitted signed Proof of Service of the Notice of Direct Request Proceeding declaring that the landlord served the tenant's mother with the Notice of Direct Request Proceeding in person on February 22, 2011.

The Landlord has applied for a Monetary Order which requires that the landlord serve the tenants as set out under Section 89(1) and the Residential Tenancy Rules of Procedure, Rule 3.1, states that the applicant must serve each respondent with a copy of the Application for Dispute Resolution, along with copies of all of the following: a) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch; b) the dispute resolution proceeding information package provided by the Residential Tenancy Branch; c) the details of any monetary claim being made, and d) any other evidence accepted by the Residential Tenancy Branch with the application or that is available to be served. In this case the Notice of Hearing and application was served to an individual who is not a respondent, not a party to the tenancy and who did not sign the tenancy agreement.

However Section 89(2) does permit an application by a landlord under section 55 [*order of possession for the landlord*], to be served by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant. In this instance, I find that the landlord chose to post the Notice of Direct Request on the door. I find that this method of service only complies with the Act for the purpose of the order of possession, and is not adequate service for an application for a monetary order.

Accordingly, I find that the portion of the landlord's application relating to the monetary order was not properly served in compliance with the Act and this is dismissed with

leave to reapply. However, the direct request proceeding pertaining to the Order of Possession based on the Ten-Day Notice, will proceed and a decision will be rendered.

Issue(s) to be Decided

The remaining issue to be decided is whether the landlord is entitled to an Order of Possession for unpaid rent pursuant to section 55 of the *Residential Tenancy Act (the Act)*. I have reviewed all documentary evidence.

Analysis

The landlord submitted a copy of the Ten-Day Notice to End Tenancy for Unpaid Rent and a "Proof of Service" form stating that the Ten-Day Notice, was served to the tenant in person on February 8, 2011 at 9:00 a.m. in front of a witness.

The purpose of serving documents under the *Act* is to notify the person being served of their failure to comply with the *Act* and of their rights under the *Act* in response. The landlord has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy and I find that the landlord has met this burden.

Submitted into evidence was a copy of the tenancy agreement signed on December 18, 2010 showing rent set at \$1,600.00 per month and security deposit in the amount of \$800.00 and pet damage deposit for \$800.00. No copy of the tenant's rent account ledger was submitted. However, in the Application of Direct Request, the landlord indicated that the tenant was \$1,600.00 in arrears for rent for February 2011.

Based on the evidence, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid all of the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court. The portion of the application for a monetary order 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 2011.

Residential Tenancy Branch

