



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded 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 for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 14, 2011, the landlord served the tenants with the Notice of Direct Request Proceeding via registered mail.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later.

Based on the written submissions of the landlord, I find that the tenants have been duly served with the 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 and 67 of the Act.

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 tenants;
- A copy of a residential tenancy agreement which was signed by the parties on December 29, 2011, indicating a monthly rent of \$1,030.00 due on the first day of the month, beginning January 1, 2011;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 4, 2011, with a stated effective vacancy date of April 14, 2011, for \$1,030.00 in unpaid rent. Under the Act, the Notice self corrects to April 17, 2011, for an effective vacancy date;
- 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 \$1,030.00 in unpaid rent. Under the Act, the Notice self corrects to March 15, 2011, for an effective vacancy date; and
- A receipt issued to the tenants, for the March 2011 payment by cheque, which was apparently returned as NSF.

Documentary evidence filed by the landlord indicates that the tenants had failed to pay all rent owed and was served the April 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door on April 4, 2011. This Notice listed unpaid rent as of April 1, 2011, in the amount of \$1,030.00.

The Notice states that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenants 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 tenants have been served with a notice to end tenancy as declared by the landlord.

The landlord has provided a copy of the 10 Day Notice to End Tenancy which was issued on April 4, 2011 and states “you have failed to pay rent in the amount of \$1,030.00 that was due on April 1, 2011. I find this Notice is intended to incorporate all unpaid rent to date, as of the date listed as being unpaid. Therefore the Notice on its face tends to indicate that there was no rent owed for March 2011, but only for April 2011, in the amount of \$1,030.00.

I accept the evidence before me that the tenants have failed to pay the rent owed in full as listed on the April Notice to End Tenancy, within 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. Therefore, I find that the landlord is entitled to an Order of possession and a

monetary Order for unpaid rent, but only for the amount listed on the April 4, 2011, Notice to End Tenancy.

Conclusion

I find 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 **\$1,030.00** comprised of \$1,030.00 rent owed as of April 1, 2011.

The landlord is at liberty to file an Application for Dispute Resolution to deal with the issue of any unpaid rent which may be owed prior to April 1, 2011.

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: April 27, 2011.

Residential Tenancy Branch