



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR

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 August 02, 2011 an agent for the Landlord served the Tenant 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 the Landlord mailed a package to the rental unit. Section 90 of the *Act* determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is August 05, 2011.

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

Issue(s) to be Decided

The issue to be decided is whether the Landlord is entitled to an Order of Possession, 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 the Tenant.
- A copy of a residential tenancy agreement between the Landlord and the Tenant, which appears to be signed by the Tenant, that indicates that the tenancy began on June 01, 2010 and that the Tenant was required to pay rent of \$885.00 by the first day of each month.
- A copy of a Notice to End Tenancy for Unpaid Rent that was signed by an agent for the Landlord and dated July 04, 2011, which declares that the Tenant must vacate the rental unit by July 14, 2011 as the Tenant has failed to pay rent in the

amount of \$880.00 that was due on July 01, 2011. The Notice declares that the tenancy will end unless the Tenant pays the rent or submits 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 Notice to End Tenancy for Unpaid Rent in which an agent for the Landlord declared that the agent posted the Notice on the Tenant's door on July 4, 2011, in the presence of another party, who also signed the Proof of Service.
- A Resident Ledger that indicates the Tenant owed \$880.00 on July 04, 2011.

In the Application for Dispute Resolution the Landlord declared that the Notice to End Tenancy for Unpaid Rent was posted on July 04, 2011.

In the Application for Dispute Resolution the Landlord declared that the Tenant did not pay rent when it was due on July 01, 2011. The Landlord does not declare whether rent is still outstanding for July.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$880.00 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 Tenant did not pay rent when it was due on July 01, 2011 and that she had not paid rent for July by July 04, 2011.

I find that I have insufficient evidence to conclude that the Tenant still owes rent for July. In making this determination I was influenced by the fact that the Landlord has not declared that rent is still owing for July and by the fact that the Landlord has not made a claim for unpaid rent from July.

I find that the Resident Ledger that was submitted in evidence is of limited assistance in this dispute, as I cannot assume that the Tenant did not make a payment after July 04, 2011 and that the Landlord simply neglected to submit an updated Resident Ledger.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Notice to End Tenancy for Unpaid Rent was posted at the rental unit on July 04, 2011. Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on July 07, 2011.

Section 46(1) of the *Act* stipulates that a Notice to End Tenancy for Unpaid Rent is effective ten days after the date that the tenant receives the Notice. As the Tenant is

deemed to have received this Notice on July 07, 2011, I find that the earliest effective date of the Notice was July 17, 2011.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was July 17, 2011.

Section 46(4) of the *Act* stipulates that a Notice to End Tenancy for Unpaid Rent has no effect if the tenant pays the overdue rent within five days of receiving the Notice to End Tenancy. In these circumstances I find that I have insufficient evidence to conclude that the Tenant did not pay the overdue rent from July within five days of receiving the Notice to End Tenancy.

Conclusion

As I have insufficient evidence to conclude that the Notice to End Tenancy was rendered ineffective by section 46(4) of the *Act*, I dismiss the Landlord's application for an Order of Possession.

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: August 10, 2011.

Residential Tenancy Branch