



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

Introduction

This matter was conducted 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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 7, 2011, the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service. Section 90 of the Act determines that a document is deemed to have been served on the fifth day after mailing.

Based on the written submissions of the landlord, I find that the tenants have been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each tenant;
- A copy of a residential tenancy agreement and addendum which was signed by tenant B.S. and the landlord on May 19, 2011, indicating a monthly rent of \$\$1,275.00 due on the first day of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on August 8, 2011, with a stated effective vacancy date of August 22, 2011, for \$1,715.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door on August 8, 2011, at 2:10 p.m. with an agent present as a witness. The Act deems the tenants were served on August 10, 2011.

The Notice states that the tenants had five days to pay the rent 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.

The application indicated that the tenant did not pay \$390.00 rent owed in July, 2011 and failed to pay August 2011 rent in the sum of \$1,275. The application indicated a claim for late fees.

A tenant ledger was supplied as evidence.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord.

The notice is deemed to have been received by the tenants on August 10, 2011.

I accept the evidence before me that the tenants have failed to pay the rent owed in full for July and August, 2011, in the sum of \$1,665.00 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; August 22, 2011.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid rent.

As only 1 of the two tenants served with Notice of this proceeding signed the tenancy agreement, I find that the monetary Order for unpaid rent may not proceed against the individual who did not sign the agreement.

Conclusion

I find, pursuant to section 55 of the Act, 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 \$1,665.00 for July and August, 2011, rent owed and I grant an Order in that amount. This Order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: September 15, 2011.

Residential Tenancy Branch