



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 at 5:35 p.m. on September 19, 2011, the landlord personally served the female tenant with the Notice of Direct Request Proceeding via registered mail.

The landlord provided a 2nd Proof of Service document which indicated that both the male respondent and the female tenant were served with Notice of this proceeding. As both names were on that document I am unable to determine if the male was served or not; therefore, the claim against the male is dismissed with leave to reapply. This will also be referenced in my analysis.

Based on the written submissions of the landlord, I find that the female tenant has been served with the Direct Request Proceeding documents on the day of personal delivery.

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 the tenant;

- A copy of a residential tenancy agreement which was signed by the female respondent and the landlord on April 10, 2011, indicating a monthly rent of \$1,100.00 due on the 1st day of the month;
- A copy of a cheque in the sum of \$1,100.00 dated September 1, 2011, which the tenant told the landlord not to deposit;
- A copy of an bank account record indicating a \$550.00 deposit made to the account on September 1, 2011, which the landlord submits was the amount of rent paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 6, 2011, with a stated effective vacancy date of September 16, 2011, for \$550.00 in unpaid September, 2011, rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery to the female respondent at the rental unit, on September 6, 2011, at 3:30 p.m., with a friend of the landlord's present as a witness. . The Act deems the tenant was served on .

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

The notice is deemed to have been received by the tenant on September 6, 2011.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. There is no evidence before me that the tenant disputed the Notice.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice; September 16, 2011.

As the male respondent did not sign the tenancy agreement there is no evidence before me that he was a tenant. In the absence of evidence that he signed a tenancy agreement, I have dismissed the claim against the male. This takes precedence over my finding in relation to service.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid September, 2011, rent in the sum of \$550.00.

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 tenant 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 \$550.00 September, 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.

The claim against the male respondent is dismissed.

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 22, 2011.

Residential Tenancy Branch