



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 23, 2011, the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail to the rental unit address. The landlord provided Canada Post receipts and tracking numbers as evidence of service. Section 90 of the Act determines that a document is deemed to have been served on the 5th 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 which was signed by tenant B.K. and the landlord on September 22, 1994, indicating a monthly rent of \$755.00 due on the 1st day of the month;
- A notice signed by B.K. indicating her surname had been changed to that reflected on the application, B.C.;

- A tenancy agreement amendment naming B.C.; E.M and A.M; removing tenant D.M. from the agreement effective January 6, 2006;
- An April 2001 tenancy agreement amendment removing an individual effective January 1999; the full name of the person removed is not provided, the amendment appears to have been signed by B.C.;
- A letter to the tenant dated August 7, 2011, in relation to unpaid rent and a payment plan for rent arrears;
- A copy of a resident ledger summary report to August 2011;
- Copies of 2 unsigned repayment agreements;
- A Notice of Rent Increase issued on May 11, 2011, effective September 1, 2011, increasing rent to \$963.00 effective September 1, 2009, and a May 11, 2011, letter to that effect;
- A copy of a July 29, 2011, rent cheque in the sum of \$942.00;
- A copy of July 7 and 27, 2011, letters from the tenant acknowledging late rent payments;
- A copy of an August 16, 2011, 10 Day Notice ending tenancy for Unpaid Rent and Proof of Service document; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued to tenants B.C. and A.M. on September 12, 2011, with a stated effective vacancy date of September 22, 2011, for \$1,072.00 in unpaid September rent in the sum of \$963.00 and rent owed from the August rent payment plan in the sum of \$109.00 rent.

Documentary evidence filed by the landlord indicates that the tenant's 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 September 12, 2011, at 12:13 p.m., with a witness present. The Act deems the tenants were served on September 15, 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 tenant's did not apply to dispute the Notice to End Tenancy within five days from the date of service.

The application indicated that the tenants did not pay September rent or payment plan payments owed in September and when the tenancy ends.

Analysis

Only tenant B.C. has signed the tenancy agreement; the other respondents are named on the agreement as children of the tenant; but they have not signed the agreement. Therefore, in the absence of evidence that a tenancy agreement has been established with B.C.'s children, I find that the claim against those individuals is dismissed.

The landlord has supplied copies of multiple documents in relation to rent owed; however the application has not included any information in relation to the specific rent areas; I find the ledger insufficient and lacking clarity. Therefore, in the absence of evidence of the months of rent that the payment plan refers to I find that the landlord is entitled to compensation for unpaid September, 2011, rent in the sum of \$755.00; the amount indicated on the tenancy agreement.

The landlord has supplied only 1 Notice of Rent Increase, issued in September, 2011. There is no evidence before me of any previous Notices issued, as required by the Act; therefore the balance of the claim for September rent is dismissed.

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 15, 2011.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to September 25, 2011.

I accept the evidence before me that the tenant has failed to pay the September, 2011, 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 has 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 25, 2011.

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 \$755.00.

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 \$755.00 September, 2011, rent owed and I grant an Order in that amount. This Order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The balance of the monetary claim is dismissed.

The claim against respondents A.M. and E. M. 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 29, 2011.

Residential Tenancy Branch