



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted proof of Service of the Notice of Direct Request Proceeding which indicates that on September 13, 2011 the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. Canada Post receipts and proof of delivery were provided in the Landlord's evidence. The notes on file indicate the Landlord served the Tenant a second time, in person, on September 20, 2011. Based on the written submissions of the Landlord and the notes on file, I find that the Tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- Proof of Service of Direct Proceeding documents for the Tenant;
- A copy of a residential tenancy agreement which was signed May 31, 2011 for a fixed term tenancy beginning June 1, 2011, and switching to a month to month tenancy after June 1, 2012 for the monthly rent of \$800.00 due on 1st of the month and a deposit of \$400.00 was paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, September 1, 2011 with an effective vacancy date of September 10, 2011 due to \$550.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on September 1, 2011 at 4:40 p.m. when it was posted to the Tenant's door in the presence of a witness.

Analysis

Order of Possession - 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 4, 2011, the third day after it was posted to the Tenant's door, and the effective date of the notice is September 14, 2011, pursuant to section 90 of the *Act*. 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*.

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 and I hereby grant the Landlord an Order of Possession.

Monetary Order – The evidence supports that the Tenant has failed to pay the August 1, 2011 rent in full in violation of section 26 of the *Act* which provides that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order of **\$550.00**.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenants.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$550.00**. This Order is legally binding and must be served upon the Tenant.

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