



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

Introduction

This matter proceeded 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 for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 24, 2011, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Act states that when served by this method, the tenant is deemed served on the fifth day (5th.) after it is mailed. Based on the written submissions of the landlord, I find that the tenant has been deemed served with the Direct Request Proceeding documents October 19, 2011.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 46, 55 and 67 of the Act.

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 parties on March 09, 2009, indicating a monthly rent of \$997 due on the first day of the month, as well as a Notice of Rent Increase dated December 2009 increasing the rent to \$1007; and,
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 01, 2011 by posting it on the tenant's door with an effective vacancy date (automatically adjusted) of October 14, 2011, for \$1007 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay all rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting. The tenant is deemed to have received the 10 Day Notice to End Tenancy for Unpaid Rent on October 04, 2011.

The Notice states that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end from the service date. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service. The landlord's application states that as of the date of application the tenant still owes a balance of \$250 of arrears in rent.

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.

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. Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent. The landlord has submitted an application declaring that on the date of application the tenant owes remaining rent of **\$850**, and that the application has not been amended.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and this 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 to section 67 in the amount of **\$250** comprised of rent owed.

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: October 31, 2011

Residential Tenancy Branch