



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 October 28, 2011, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail sent 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 5th day after mailing.

Based on the written submissions of the landlord, I find that the tenant has 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 the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on February 14, 2006, indicating a monthly rent of \$725.00 due on the 31st day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 4, 2011, with a stated effective vacancy date of October 14, 2011, for \$818.00 in unpaid October, 2011, rent that was due on September 30, 2011.

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 posting to the tenant's door on October 4, 2011, at 11:30 a.m. with another tenant present as a witness. The Act deems the tenant was served on October 7, 2011.

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.

The application indicated that the tenant paid \$100.00 of October, 2011, rent and was given a receipt for use and occupancy only. The application indicated the rent had increased from the original amount in 2007 to \$818.00.

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 October 7, 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 October 17, 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; October 17, 2011.

I have accepted the submission that rent owed has risen from \$725.00 in 2007, to \$818.00 in 2011 and that the tenant has not paid \$718.00 owed in October, 2011; within five days of October 7, 2011. I note that the Notice indicated rent was due on September 30, 2011; according to the tenancy agreement rent was due on September 31, 2011; however, that error does not invalidate the Notice.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid October, 2011, rent in the sum of \$718.00.

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 \$718.00 for October, 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: November 03, 2011.

Residential Tenancy Branch