Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>   OPR MNR

<u>Introduction</u>
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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 15, 2011 the Landlord served the Tenant with the Notice of Direct Request Proceeding by posting the hearing documents to the Tenant's door at 7:15 p.m. Based on the written submissions of the Landlord, I find that the Tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents to proceed for his request for an Order of Possession.

<u>Issue(s) to be Decided</u>
Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

<u>Background and Evidence</u>
I have carefully reviewed the following evidentiary material submitted by the Landlord:

- 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 all parties for a month to month tenancy that began on December 10, 2010, for the monthly rent of $430.00 due on 1st of the month and a deposit of $215.00 was paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, November 3, 2011 with an effective vacancy date of November 3, 2011 due to $430.00 in unpaid rent for November 2011.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on November 3, 2011 at 7:00 p.m. when it was posted to the Tenant's door in the presence of a witness.

Analysis

Section 89(1) of the Act does not provide for service of an application for dispute resolution and hearing documents for an Order of Possession and a Monetary Order by posting the hearing documents to the Tenant's door.

Section 89(2) of the Act provides for service of an application for dispute resolution and hearing documents by posting the hearing documents to the Tenant's door if the application is only for an Order of Possession.

The Proof of Service of the Notice of Direct Request document clearly state under Posted at: "Note: Do not use this method if requesting a Monetary Order".

In this case the Landlord served the hearing documents by posting them to the Tenant's door and has applied for both an Order of Possession and a Monetary Order. Accordingly I dismiss the Landlord's request for a Monetary Order, with leave to reapply, and proceed with his application for only an 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 November 18, 2011, three days after it was posted to the Tenant's door, and the effective date of the notice is November 28, 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 and has not made application to dispute the Notice 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.

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.

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 22, 2011.

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Residential Tenancy Branch