



Dispute Resolution Services

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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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 21, 2011 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipts were provided in the Landlord's evidence. 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.

Issue(s) to be Decided

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

Background and Evidence

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 fixed term tenancy that began on July 1, 2011 and set to switch to a month to month tenancy after June 30, 2012, for the monthly rent of \$1,600.00 due on 1st of the month and a deposit of \$750.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, November 9, 2011 with an effective vacancy date of November 22, 2011 due to \$1,660.00 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 9, 2011 at 4:00 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 November 12, 2011, three days after it was posted to the Tenant's door, and the effective date of the notice is November 22, 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.

Monetary Order – The tenancy agreement indicates that rent is payable in the amount of \$1,600.00 and is due on the first of each month. However, the 10 Day Notice issued November 9, 2011 lists the Tenant has failed to pay rent for November 2011 in the amount of \$1,660.00 and the Landlord has made application for a monetary order in the higher amount of \$1,660.00.

There is no evidence before me to indicate why the 10 Day Notice was issued showing the amount due of \$1,660.00 rather than the rent amount of \$1,600.00. Accordingly I find there to be insufficient evidence to support the amount being claim for monetary compensation through the direct request process and I hereby dismiss the Landlords claim for a monetary order with leave to reapply.

Any deposits currently held in trust by the Landlords 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.

I HEREBY DISMISS the Landlord's claim for a Monetary Order, with leave to reapply.

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 28, 2011.

Residential Tenancy Branch