



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 December 14, 2011, the landlord served each 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 to each tenant. 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 tenants have 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/application to rent which was signed by the parties on June 25, 2009, indicating a monthly rent of \$855.00 due on the first day of the month;
- A tenant ledger showing payment in the sum of \$2,610.00 since July, 2011, plus \$870.00 paid in December, 2011; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 2, 2011, with a stated effective vacancy date of December 12, 2011, for \$1,240.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery to both tenants on December 2, 2011, at 7:30 p.m. A proof of service document signed by the female tenant, acknowledging service, was supplied as evidence of service. The Act deems the tenants were served on the day of personal delivery.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days from the date of service.

The application indicated the tenants owed \$1,270.00 that would be paid by the end of November and that on December 1, 2011, the landlord received \$870.00.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord.

The notice is deemed to have been received by the tenants on December 2, 2011.

I accept the evidence before me that the tenants have 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 tenants are 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.

In relation to the monetary order; the ledger and evidence before me indicated the tenants have paid \$3,480.00 since July 1, 2011. During this period of time the tenants owed \$5,130.00. The balance owed would then be \$1,650.00, not the \$1,240.00 claimed by the landlord. In the absence of an accounting which aligns with the amount claimed by the landlord and explains the difference in the amount claimed and the evidence before me, I find that the monetary claim is dismissed with leave to reapply.

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 tenants and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The monetary claim is dismissed 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: December 20, 2011.

Residential Tenancy Branch