



Dispute Resolution Services

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 December 16, 2011, the landlord served each of the tenants with the Notice of Direct Request Proceeding via registered mail.

Section 90 of the Act determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlord, I find that the tenants have been duly served with the Direct Request Proceeding documents.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order 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 Request Proceeding;
- A copy of a residential tenancy agreement which was signed by the parties on June 12, 2008, indicating that the tenants are obligated to pay \$835.00 in rent in advance on the first day of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which the landlord served on the tenants on December 2, 2011 for \$860.00 in unpaid rent and late payment fees due in the month of December; and

- A copy of the Proof of Service of the Notice to End Tenancy showing that the landlord served the notice to end tenancy on the tenants by posting the notice on the door of the rental unit.

Section 90 of the Act provides that because the notice to end tenancy was served by posting, the tenants are deemed to have received the notice 3 days later on December 5, 2011.

The Notice restates section 46(4) of the Act which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution. The tenants did not apply to dispute the Notice to End Tenancy within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

Analysis

I find that the tenants received the notice to end tenancy on December 5, 2011. I accept the landlord's undisputed evidence and I find that the tenants did not pay the rental arrears and did not apply to dispute the notice and are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I grant the landlord an order of possession which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

I accept the evidence before me that the tenants has failed to pay \$835.00 in rent for the month of December. I find that the landlord is entitled to recover the rental arrears and I grant the landlord a monetary order for \$835.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. The claim for \$25.00 in late payment fees is dismissed as section 55(4) does not permit any monies other than rent to be recovered on a Direct Request application.

Conclusion

I grant the landlord an order of possession and a monetary order for \$835.00.

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 28, 2011

Residential Tenancy Branch