



Dispute Resolution Services

Page: 1

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*, and dealt with an application made 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 November 15, 2011 the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail. Section 90 of the *Act* provides that a document is deemed to have been served 5 days after mailing. Based on the written submissions of the landlord, I find that the tenant has been served with the Notice of Direct Request Proceeding requesting an Order of Possession and monetary order.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord on February 26, 2011 and by the tenant on March 2, 2010 for a tenancy beginning March 1, 2011, for the monthly rent of \$995.00 per month payable on 1st day of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, November 2, 2011 with **no effective vacancy date**, due to \$895.00 in unpaid rent that was due on the 1st of November, 2011. Both pages of the 2-page form have been provided.

- A copy of a Proof of Service for the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities that states that the tenant was served with the notice on November 2, 2011 by posting it to the door of the rental unit.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with the notice to end tenancy as declared by the landlord, which is deemed to have been received by the tenant on November 5, 2011, being 3 days after posting the notice to the door of the rental unit.

I further accept that the tenant has failed to pay rent when required to do so under the agreement, however, the notice to end the tenancy served by the landlord does not contain an expected date of vacancy as required under the *Act*.

If rent remains unpaid, the landlord is at liberty to re-serve a notice to end the tenancy upon the tenant, and the *Act* specifies that if the tenant does not pay the rent in full within 5 days, or dispute the notice within that 5 day period, the tenant will be conclusively presumed to have accepted that the tenancy will end on the effective date of the notice, however, the notice must have an expected date of vacancy in order to be valid.

I also note that there appears to be an error in the tenancy agreement; the agreement is dated February 26, 2011 under the landlord's signature, and March 2, 2010 under the tenant's signature.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

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 01, 2011.

Residential Tenancy Branch