



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 1, 2011, at 4:16 p.m. the landlord served the male tenant with the Notice of Direct Request Proceeding at the rental unit address. Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

There was no evidence before me that the female tenant had been serviced with Notice of this proceeding; therefore, I find that the female tenant has been served with Notice of this proceeding for the purposes of an application requesting an Order of possession. The monetary claim against the female tenant is dismissed as there is no evidence before me that she has been personally served or served via registered mail, as required by the Act.

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 male tenant;
- A copy of a residential tenancy agreement which was signed by the parties on August 5, 2010, indicating a monthly rent of \$775.00 due on the first day of the month;

- A copy of an August 6, 2010 letter of understanding in relation to occupants;
- A copy of a condition inspection report; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 11, 2011, with a stated effective vacancy date of December 22, 2011, for \$300.00 in unpaid December, 2011 rent; plus \$775.00 owed for April 2011.

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 the male tenant on December 11, 2011, at 11:40 a.m. with a witness present at the rental unit address. The Act deems the tenants were served on December 11, 2011.

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

The landlord has claimed unpaid December 2011 rent in the sum of \$300.00 plus unpaid rent in the sum of \$775.00 owed in April, 2011.

Analysis

I have reviewed all documentary evidence and accept that the tenant 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 11, 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*. There is no evidence before me that the tenants disputed the Notice.

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; December 22, 2011.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid December, 2011, rent in the sum of \$300.00.

There was no evidence before me in relation to rent claimed for April, 2011; 9 months ago. In the absence of evidence setting out this portion of the claim; I dismiss that claim for unpaid April rent, 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.

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of \$300.00 December, 2011, rent owed and I grant an Order in that amount. This Order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The monetary claim against the female tenant is dismissed.

The claim for unpaid April, 2011, rent 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: January 03, 2012.

Residential Tenancy Branch