



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 16, 2011 the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Act determines that the document is deemed to have been served five days after a notice has been mailed by registered mail or on December 21, 2011.

Based on the written submissions of the landlord, I find that the tenant has 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 which was signed by the parties on October 28, 2009, indicating a monthly rent of \$950.00 due in advance of the 1st day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 5, 2011 with a stated effective vacancy date of December 15, 2011, for \$975.00 in unpaid rent. The Landlord wrote on the application that the rent

was increased to \$975.00, but the Landlord did not provide any proof of a rent increase by way of the correct rent increase form.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the Tenant's door on December 5, 2011 at 6:30 p.m. The Proof of Service of the 10 Day Notice to End Tenancy is signed by a witness. The Act deems the tenant was served on December 8, 2011, three days after posting the Notice on the tenant's door.

The Notice states that the tenant 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.

Analysis

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 December 8, 2011.

I accept the evidence before me that the tenant has 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 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.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for the amount of unpaid adjusted to the rent indicated in the tenancy agreement (\$950.00) as no documented proof was provided for a rent increase.

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 tenant 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 **\$950.00** 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.

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*.

Residential Tenancy Branch