



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 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 January 18, 2012 the Landlord served the Tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act deems a document delivered in that manner to have been received (or served) on the fifth day after it was sent.

Based on the evidence and written submissions of the Landlord, I find that the Tenants were served as required by s. 89 of the Act with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent and to a Monetary Order for unpaid rent pursuant to sections 46, 55 and 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted the following documentary evidence:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenants;
- A copy of a residential tenancy agreement which was signed by the parties in October 2010 for a 6 month fixed term tenancy beginning October 1, 2008 for the monthly rent of \$1,425.00 due in advance on 1st day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 6, 2012 with an effective vacancy date of January 14, 2012 due to \$1,325.00 in unpaid rent; and
- A copy of a receipt for a partial rent payment of \$600.00 dated January 11, 2012.

The evidence filed by the Landlord indicates that the Tenants failed to pay the rent owed for the month of January 2012 when it was due and that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent on January 6, 2012 when it was posted to the rental unit door. 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. However, the Tenants made a partial payment of \$600.00 on January 11, 2012.

Analysis

I have reviewed all of the documentary evidence and accept that the Tenants been served with the Notice to End Tenancy as declared by the Landlord. The Notice was deemed pursuant to s. 90 of the Act to have been received by the Tenants 3 days later or on January 9, 2012. Consequently, the effective date of the Notice is amended pursuant to s. 53 of the Act to January 19, 2012.

I find however, that in accepting a partial rent payment from the Tenants, the Landlord may have reinstated the tenancy rendering the 10 Day Notice unenforceable. The copy of the receipt provided by the Landlord for the partial payment is illegible and therefore I find that there is insufficient evidence at this time as to whether the Landlord accepted this payment for use and occupancy only or as rent.

Conclusion

Based on the foregoing I find that a conference call hearing is required in order to determine if the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 6, 2012 is enforceable. Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the Tenants within three (3) days of receiving this decision in accordance with section 88 of the Act.

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 24, 2012.

Residential Tenancy Branch