



Dispute Resolution Services

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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 Proof of Service of the Notice of Direct Request Proceeding which declares that on February 16, 2012 the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord provided copies of the Canada Post receipt registered and mail tracking number as proof of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served within five days.

Based on the written submissions of the Landlord, I find that the Tenant has been duly served with the Direct Request Proceedings 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 Act.

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for the Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on December 02, 2011, indicating a monthly rent of \$650.00 due on the first day of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 02, 2012 with a stated effective vacancy date of February 12, 2012, for \$1,300.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant had failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the Tenant's door on February 02, 2012 at 9:45 P.M. The Landlord provided evidence that this was witnessed by a third party. A Notice served in this manner is deemed to have been served by February 05, 2012, which is three days from the date posted.

The Notice states that the Tenant had five days to pay the full amount of the outstanding rent, or apply for Dispute Resolution, or the tenancy would end from the service date. The Tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service. The deadline to do so was February 10, 2012. Although the Landlord indicated that the Tenant had until February 12, 2012 to vacate the premises, the earliest effective date is 10 days from the date of service, thus this is corrected to February 15, 2012 based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline.

The Landlord's Application for Dispute Resolution and the 10 Day Notice indicates that they are seeking unpaid rent for January 2012 (\$650.00) and February 2012 (\$650.00) for a balance owed by the Tenant as of February 01, 2012 in the amount of \$1,300.00, for the unpaid rent.

Analysis

I have reviewed all documentary evidence and accept that the Tenant has been served with the 10 Day Notice to End Tenancy as declared by the Landlord.

I accept the evidence before me that the Tenant has failed to pay the rent owed in the amount of \$1,300.00 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 February 15, 2012, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession and a monetary order for unpaid rent.

Conclusion

I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenant and this 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 order pursuant to section 67 in the amount of **\$1,300.00** comprised of rent owed. 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 orders accompany the Landlord's copy of this decision.

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: February 22, 2012.

Residential Tenancy Branch