



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 due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 03, 2012 the landlord served the tenants with the Notice of Direct Request Proceeding by registered mail. Section 90 of the *Residential Tenancy Act* determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the written submissions of the landlord, I find that the tenants have been served with the Dispute Resolution Direct Request Proceeding documents.

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 tenants;
- A copy of a residential tenancy agreement which was signed by the parties on September 09, 2011 for a tenancy beginning September 15, 2011 for the monthly rent of \$1,100.00 due on the 15th of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 17, 2012 with an effective vacancy date of January 31, 2012 due to \$2,200.00 in unpaid rent.
- A copy of the rent ledger showing the rent paid and the rent outstanding

Documentary evidence filed by the landlord indicates that the tenants had failed to pay the full rent owed due for the period December 15 to January 14 of \$1,100.00 and for the period January 15, 2012 to February 14, 2012 of \$700.00 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent which was posted on the door of the tenants rental unit on January 17, 2012 and therefore is deemed served three days.

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.

The landlords' documentary evidence also shows the tenants paid \$400.00 on January 26, 2012.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlords. The notice is deemed to have been received by the tenants on January 20, 2012 and the effective date of the notice remains unchanged. 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* However I am unable to determine from the evidence provided the actual amount of rent that is still outstanding due to the information provided on the rent ledger differing to the amount the landlord has put on the 10 Day Notice and a different amount claimed on the application.

As the tenants also appear to have made a rent payment on January 26, 2012 of \$400.00 the landlord has provided no information to determine if the landlords informed the tenants in writing that this amount was being accepted for use and occupancy only and did not reinstate the tenancy.

Conclusion

I dismiss the landlord's application with leave to re-apply. The landlord failed to provide any evidence to show that the amount of \$400.00 paid on January 26, 2012 was accepted for use and occupancy only and did not reinstate the tenancy. And the landlord has provided insufficient evidence to determine what rent is outstanding.

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 13, 2012.

Residential Tenancy Branch