



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR and MNR

Introduction

This hearing was conducted as a 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 the landlord served the tenant with the Notice of Direct Request Proceeding sent by registered mail on April 2, 2012 .

Based on the written submission of the landlord, I find that the tenant has been served with the 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 a Monetary Order for the 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 February 26, 2005, and renewed on March 3, 2006, the latter indicating a monthly rent of \$840 due on the first day of the month. A security deposit of \$400 was paid on March 1, 2004;

- A copy of a 10 Day Notice to End Tenancy for unpaid rent which was served by posting on the tenant's door on March 19, 2012 with an end of tenancy date of March 31, 2012;
- A copy of a two-month Notice to End Tenancy dated February 28, 2012 setting an end of tenancy date of April 30, 2012.

Documentary evidence filed by the landlords indicates that the tenant had failed to pay the rent of \$840 which was due on March 1, 2012.

The Notice to End Tenancy 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.

The landlord had requested a monetary claim in this application for the unpaid rent of \$840, comprised of the rent owed on March 1, 2012.

Analysis

I have reviewed all documentary evidence and accept that the tenant was served with Notice to End Tenancy as declared by the landlords.

I accept the evidence before me that the tenant failed to pay the rent owed in full within the five 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 which was March 31, 2012.

Therefore, I find that the landlord is entitled to an Order of Possession based on the Notice to End Tenancy of March 19, 2012.

However, I note the existence of the Notice to End Tenancy for landlord use of February 28, 2012 which would have entitled the tenant to the equivalent of one-month's rent under section 51 of the *Act*. In the absence of any evidence from the tenant, or knowledge of whether the tenant was overholding in April which would add to the monetary claim, and in view of the landlords' stated intention to make application for any damage as may be ascertained on gaining possession, I dismiss the monetary claim with leave to reapply.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant. The Order may be filed in the Supreme Court and enforced as an Order of that Court.

The landlord's claim for a Monetary Order 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: April 10, 2012.

Residential Tenancy Branch