



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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declared that on April 13, 2012, the female landlord (the landlord) handed the tenant the Notice of Direct Request Proceeding.

Based on the written submissions of the landlord and in accordance with section 88 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on April 13, 2012.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant. According to the tenancy agreement, monthly rent was set at \$750.00, payable in advance on the 1st day of the month; and
- A copy of a 10 Day Notice posted on the tenant's door on April 2, 2012, with a stated effective vacancy date of April 12, 2012, for \$1,400.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords stated that the 10 Day Notice was posted on the tenant's door at 10:00 a.m. on April 2, 2012. In accordance with sections 88 and 90(c) of the *Act*, I find that the tenant was deemed to have been served with this 10 Day Notice on April 5, 2012, the third day after its posting on his door.

The Notice states that the tenant had five days from the date of service to pay the amount identified as owing in full 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 landlords. The landlords' written evidence stated that the Proof of Service of the Notice of Direct Request document was handed to the tenant on April 13, 2012.

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*. 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 landlords are entitled to an Order of Possession.

There are two obstacles that prevent me from considering the landlords application for a monetary Order without a participatory hearing.

First, the landlords have not provided a Notice of Rent Increase or any documentation supporting the application for a monetary Order for an amount of \$780.00 for April 2012 that varies from the \$750.00 monthly rent set out in the residential tenancy agreement signed on August 1, 2011.

Second, and of a more substantive nature, the landlords have not set out sufficient information to support the amount of their claim for unpaid rent for March and April 2012. The landlords did not complete a monetary order worksheet, nor did the landlords provide any tenant rental ledger, account statement or any other method of confirming that the tenant owes \$620.00 in unpaid rent for March 2012 and \$780.00 in unpaid rent for April 2012. The landlords have not provided a copy of a receipt or a cancelled cheque or money order for the tenant's apparent payment of a portion of his March 2012 rent. Similarly, the landlords have not provided any explanation as to why they are seeking \$780.00 in unpaid rent for April 2012 when the residential tenancy agreement signed within the previous 12 months only calls for the payment of monthly rent of \$750.00.

Without clarification of these issues, the landlords have not met the onus placed on them to supply documents that would prove the amount of rent owing (e.g., rent ledger, receipt book) in support of their application for a monetary Order. I find that I am unable to consider the landlords' application for a monetary Order against the tenant by way of a Direct Request proceeding. As I find that the landlords have not provided sufficient evidence to demonstrate their entitlement to the amount of unpaid rent claimed in their application, I am unable to consider in a Direct Request proceeding the landlords' application for a monetary Order.

Under these circumstances, I adjourn the landlords' application for a monetary award to be reconvened as a participatory hearing.

Conclusion

I find that the landlords are 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 adjourn the landlords' direct request application for a monetary Order to be reconvened at a participatory hearing. Notices of a participatory hearing date will be sent to the landlords by the Scheduler for the Residential Tenancy Branch. The landlords are responsible for serving the tenant within three days of receiving a hearing date from the Residential Tenancy Branch.

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 20, 2012

Residential Tenancy Branch