



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 *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 on May 2, 2012 at 3:10 p.m. the landlord personally served the tenant with the Notice of Direct Request Proceeding, at the rental unit address. Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

Based on the written submissions of the landlord, I find that the tenant has been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for 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 in May 2010, indicating a monthly rent of \$710.00 due in advance on or before the first day of the month;
- A copy of a tenant ledger; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 4, 2012, with a stated effective vacancy date of April 14, 2012, for \$1,215.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting to the tenant's door on April 4, 2012, at 1 p.m. with a witness present. The Act deems the tenant was served on April 7, 2012.

The Notice 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 applicaiotn indicated the tenant has not paid rent for the past 3 months; the landlord has claimed compensation in the sum of \$1,215.00.

The ledger indicated payments made in February and March, 2012 and that from at least November 2011, there was not period of time when the tenant had been paid rent in full. Only rent is shown as owed by the tenant.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord.

The Notice is deemed to have been received by the tenant on April 7, 2012.

I accept the evidence before me that the tenant has failed to pay the rent owed in full with in the 5 days granted under section 46 (4) of the Act. There is no evidence before me that the tenant disputed the Notice.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to April 17, 2012.

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; April 17, 2012.

In relation to the monetary claim, the record shows that the tenant did make payments in the last 3 months; however the financial records indicated that rent was not paid in full. The application indicated the tenant had not paid rent in the last 3 months; which contradicts the financial record supplied as evidence. The record does not provide any information prior to November 2011.

Since I am unable to obtain a complete understanding of the rent arrears, I find that the monetary claim is dismissed with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of possession.

Conclusion

I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The monetary claim 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: May 03, 2012.

Dispute Resolution Officer
Residential Tenancy Branch