

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 signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 28, 2012, the landlord served the tenant with the Notice of Direct Request Proceeding via personal service.

Based on the written submissions of the landlord, I find that the tenant has been duly 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 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 Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on December 1, 2011, indicating a monthly rent of \$725.00 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 April 17, 2012, with a stated effective vacancy date of April 30, for \$4,060.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay all rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door, which was witnessed on April 17, 2012. Section 90 of the Act deems the tenant was served on April 20, 2012.

The Notice states that the tenant had five days to pay the rent in full or apply for Dispute Resolution to dispute the Notice or the tenancy would end 10 days from the service date. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

In the details of the dispute the landlord explains that at certain times the tenant agreed to volunteer labour in lieu of paying cash for the rent. I further note the landlord had a clause in the tenancy agreement applying discounts on the rent if it was paid on time.

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.

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*, and the Tenant did not dispute the Notice. Based on this, 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 landlord is entitled to an Order of possession.

However, I find the landlord has provided insufficient evidence of the exact amount of rent that is owed by the tenant. Given the variables of partial payments in cash, and in labour in exchange for rent, and the discounts offered in the Tenancy Agreement, it is not possible on the evidence provided to determine the amount the tenant owes for rent.

Therefore, I dismiss the landlord's request for a monetary order, 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 and this Order may be filed in the Supreme Court and enforced as an Order of that Court.

I dismiss the landlord's request for monetary compensation with leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 11, 2012.

Residential Tenancy Branch