



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing proceeded 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 for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 26, 2012, at 2:45 p.m. the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the written submissions of the Landlord, I find that the Tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- 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 all parties for a month to month tenancy agreement that began on April 1, 2011, for the monthly rent of \$800.00 which is payable on the first of each month; and
- A letter indicating the applicant purchased the building and rights to this tenancy which is supported by a copy of the state of title certificate; and

- A copy of the tenant ledger indicating rent for April 1, 2012 is due in the amount of \$800.00 plus a late payment charge of \$25.00 has been added to the Tenant's account; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, April 2, 2012, with an effective vacancy date of April 12, 2012, due to \$825.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on April 2, 2012, at 4:35 p.m. when it was posted to the Tenant's door in the presence of a witness.

Analysis

Order of Possession - 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 Tenants on April 5, 2012, the third day after it was posted to the Tenant's door, and the effective date of the notice is April 15, 2012, pursuant to section 90 of the *Act*. 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*.

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 and I hereby grant the Landlord an Order of Possession.

10 Day Notice - I find that late payment fees do not fall under "non-payment" of rent and therefore should not be listed on the 10 Day Notice as rent that was due April 1, 2012. That is not to say a landlord cannot collect late payment charges as they are provided for under the *Residential Tenancy Act* Regulation section 7 which stipulates a landlord may charge late payment fees if they are included in the tenancy agreement. They simply should not be included on the 10 Day Notice as rent that was due on the first of the month. A technicality that in this case I find does not alter the Landlord's entitlement to an Order of Possession as they have proven the Tenant have failed to pay the April 1, 2012 rent as noted above.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenants.

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 02, 2012.

Residential Tenancy Branch