



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 (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 18, 2012 the landlord served the tenant with the Notice of Direct Request Proceeding personally.

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 pursuant to the *Act*.

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, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on June 5, 2012 for a month to month tenancy beginning on May 25, 2012 for the monthly rent of \$540.00 due on the last day of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on June 5, 2012 with an effective vacancy date of June 15, 2012 due to \$938.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the months of May and June 2012 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent personally on June 5, 2012 at 7:30 p.m. and that this service was acknowledged by the tenant by signing the Proof of Service document.

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

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 June 5, 2012 and the effective date of the notice was June 15, 2012. I accept the evidence before me that the tenant 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 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.

However, as the tenancy agreement was signed on the same day as the 10 Day Notice to End Tenancy for Unpaid Rent was issued, I cannot determine through the Direct Request process, which occurred first, as there is no opportunity to ask the parties any questions.

Being unable to determine when the tenancy agreement was signed, in relation to when the 10 Day Notice was issued, makes it impossible to determine if the landlord re-instated the tenancy by signing the tenancy agreement after issuing the 10 Day Notice.

Conclusion

Based on the above, I find the direct request process to be unsuitable to adjudicate the landlord's Application and I dismiss the Application, in its entirety, with leave to reapply through a participatory process.

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: June 19, 2012.

Residential Tenancy Branch