

## **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 August 6, 2012, 2012, the landlord served the tenant with the Notice of Direct Request Proceeding via posting on the door.

Section 90 of the Act determines that a document served in this manner is deemed to have been served three days later.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents. Residential Tenancy Branch Policy Guideline #39 states, "When the direct request proceeding package is posted on a tenant's door, a monetary order may not be issued through the direct request process." On this basis, the Landlord's monetary application is dismissed with leave to reapply. The Direct Request Process shall process on the possession issue only.

### **Issue(s) to be Decided**

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid pursuant to sections 46 and 55 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 March 10, 1997, indicating a monthly rent of \$685.00 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 July 16, 2012 with a stated effective vacancy date of July 27, 2012, for \$815.00 in unpaid rent.

- Copies of the Notice(s) of Rent Increase from March 31, 2009 to March 20, 2012 which show the gradual rent increase to the current rent of \$820.00.

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 personal delivery on July 16, 2012. Section 90 of the Act deems the tenant was served on July 16, 2012.

The Notice states that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end from the service date. 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 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*.

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

### 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.

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: August 14, 2012.

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Residential Tenancy Branch