



Dispute Resolution Services

Page: 1

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 and dealt with an application by the landlord for an order of possession.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 15, 2012, the landlord served the tenant with the Notice of Direct Request Proceeding by way of registered mail to the rental unit address. The landlord provided a copy of a Canada Post receipt which included a tracking number for the registered mail. A Proof of Service document supplied as evidence of service indicated the mailing address used by the landlord. Section 90 of the Act determines that a document that is sent by mail is deemed to have been served on the 5th day after mailing.

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 the requested order?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding;
- A copy of the tenancy agreement which was signed by the parties on September 28, 2011, indicating a monthly rent of \$1,700.00 due on the first day of the month; and

- A copy of a 10 Day Notice to End Tenancy dated August 2, 2012, with a stated effective date of August 16, 2012, for \$1,400.00 in unpaid rent for August 2012.

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 by posting to the tenant's door on August 2, 2012, at 1:00 p.m. with the building manager present as a witness. The Act deems the tenant was served on August 5, 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 pay the rent or 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.

The notice is deemed to have been received by the tenant on August 5, 2012.

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*. There is no evidence before me that the tenant disputed the Notice.

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; September 20, 2011.

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

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant. 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*.