



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 a Direct Request proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act* in response to an application made by the landlords for an Order of Possession and a monetary order for unpaid rent.

The landlords submitted a signed Proof of Service of the Notice of Direct Request which declares that on August 17, 2012 the landlords served the tenant with the Notice of Direct Request Proceeding by registered mail. Section 90 of the *Act* provides that a document is deemed to have been served 5 days after mailing. Based on the written submissions of the landlords, I find that the tenant has been served with the Notice of Direct Request proceeding requesting an Order of Possession and a monetary order.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?
Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by both landlords and the tenant on November 23, 2010 for a tenancy commencing on December 1, 2010, for the monthly rent of \$1,150.00 payable on the 1st day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which was issued on March 5, 2012 which contains no effective date of vacancy, due to \$1,300.00 in unpaid rent that was due on August 1, 2012 (both pages of the 2-page form have been provided);
- A copy of a Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities that states that the tenant was served with the notice on August 6, 2012 by posting it to the door of the rental unit;
- The Landlord's Application for Dispute Resolution dated August 17, 2012 which states that the tenant has not paid the full amount of rent for the month of August, 2012, leaving a balance outstanding of \$1,300.00.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with the notice to end tenancy as declared by the landlords, which is deemed to have been received by the tenant on August 9, 2012, being 3 days after posting the notice to the door of the rental unit.

I accept the evidence before me that the tenant has failed to pay the rent owed within the 5 days provided under Section 46(4) of the *Act*, however, no effective date of vacancy is contained in the notice to end tenancy. The *Residential Tenancy Act* states that if a tenant does not dispute the notice within 5 days of service, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. If the effective date has been omitted on the notice, the tenant cannot be expected to accept that the tenancy has ended on any specific date.

Further, the Landlord's Application for Dispute Resolution states that the tenant failed to pay rent in the amount of \$1,300.00 for the month of August, 2012, and the notice to end tenancy states that the tenant failed to pay rent in the amount of \$1,300.00, however the tenancy agreement states that rent is \$1,150.00 per month and no explanation of the greater amount is contained in the application.

I therefore find that the landlords are not entitled to an Order of Possession or a monetary order for unpaid rent based on the notice to end tenancy that was issued to the tenant and the documentation provided with the application. The landlords are at liberty to serve a new notice to end tenancy, and if the tenant does not dispute the notice within 5 days, or pay the rent in full within 5 days, or if the tenant fails to move from the rental unit on the effective date of the notice, the landlords may re-apply for an Order of Possession and a monetary order.

Conclusion

For the reasons set out above, the landlords' application is hereby dismissed.

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: September 05, 2012.

Residential Tenancy Branch