



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DIRECT REQUEST DECISION

Dispute Codes : OPR, MNR

Introduction

The 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 and a monetary order for rental arrears based on a Ten Day Notice to End Tenancy for Unpaid Rent .

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 30, 2012, the landlord served each tenant with the Notice of Direct Request, one by registered mail and the other in person. Registered mail is deemed to be served in five days.

Based on the written submissions of the landlord, I find the tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession and a monetary Order for rental arrears pursuant to 55 and 67 of the *Residential Tenancy Act (the Act)*. I have reviewed all documentary evidence.

Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a copy of the Notice to End Tenancy for Unpaid Rent and a "Proof of Service" form stating that the Notice was served to the tenant by posting it on the door on August 13, 2012 at 1:14 p.m. in front of a witness.

The purpose of serving documents under the *Act* is to notify the person of a failure to comply with the Act and of their rights in response. The landlord, seeking to end the tenancy has the burden of proving that the tenant was served with the Notice to End Tenancy and I find that the landlord has met this burden.

Preliminary Matter

Submitted into evidence was a copy of the tenancy agreement signed on November 17, 2008 showing rent set at \$1,740.00 per month..

The Fact Sheet containing directions to apply for a resolution under this section states that the following mandatory documentation must accompany the Application:

- Copy of the 10 Day Notice to End Tenancy;
- Copy of the Tenancy Agreement signed by the parties; and
- Proof of Service of the 10 Day Notice to End Tenancy. (my emphasis)

In this instance, I find that the landlord had submitted a copy of the tenancy agreement, and the this agreement named two different co-tenants. However it was only signed and dated by one of the two respondent tenants. Therefore, I find that the request for a Monetary Order can only proceed against the co-tenant who had signed the agreement and cannot proceed against the other co- tenant who did not sign the agreement.

Analysis

No copy of the tenant's rent account ledger was submitted, but in the Application for Direct Request the landlord indicated that the tenant was in arrears for \$1,900.00 for the month of July and August 2012. Based on the evidence, I find the landlord is entitled to monetary compensation under section 67 in the amount of \$1,900.00 for unpaid rent.

Based on the evidence submitted by the landlord, I find that the tenant was served with a Notice to End Tenancy. The tenant has not paid all of the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Given the above facts I find that the landlord is entitled to an Order of Possession.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby issue a monetary order in favour of the landlord in the amount of \$1,900.00 for rental arrears. This order must be served on the tenant and may be enforced through Small Claims court if necessary.

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 04, 2012.

Residential Tenancy Branch

