



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

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 September 19, 2012, the landlord personally served the tenant with the Notice of Direct Request Proceeding.

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

Issues to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding;
- A copy of a residential tenancy agreement which was signed by the parties on July 16, 2012, indicating that the tenant is obligated to pay \$800.00 in rent in advance on the first day of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") which the landlord served on the tenant on September 3, 2012 alleging that \$825.00 in rent due on September 1 was unpaid; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice on the tenant by posting it on the door of the rental unit.

Section 90 of the Act provides that because the Notice was served by posting, the tenant is deemed to have received the Notice 3 days later on September 6, 2012.

The Notice restates section 46(4) of the Act which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I find that the tenant received the Notice on September 6, 2012. While the tenant received and did not dispute the Notice, I find that the Notice was flawed as it claimed that the tenant owed \$825.00 in rent on September 1 while the tenancy agreement required a payment of just \$800.00 each month. The landlord provided no documentation to show that there were arrears in place from a previous month and while the tenancy agreement provides for a \$25.00 late payment fee, I find that the additional \$25.00 added to the amount owing on the Notice cannot have been the late fee as there is no provision in the Act whereby late payment fees can be characterized as rent.

I find that the Notice was misleading as it implied that the tenant could not cancel the Notice unless he paid more than the \$800.00 which was due on September 1 and for that reason I find that the Notice is invalid and ineffective to end the tenancy. I therefore dismiss the claim for an order of possession.

I accept the evidence before me that the tenant has failed to pay \$800.00 in rent for the month of September. I find that the landlord is entitled to recover the rental arrears and I grant the landlord a monetary order for \$800.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

I dismiss the claim for an order of possession and I grant the landlord a monetary order for \$800.00.

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: October 01, 2012

Residential Tenancy Branch