



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing was conducted as a 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, but not a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that the landlord served the tenants with the Notice of Direct Request Proceeding in person on November 15, 2012.

Based on the written submission of the landlord, I find that the tenants have been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

The issue to be decided is whether the landlord is entitled to an Order of Possession 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 Proceeding for the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on May 12, 2012 at a monthly rent of \$1,600 plus utilities at \$75 per month. Security and Pet Damage deposits of \$800 and \$400 were paid on May 9, 2012 and June 13, 2012 respectively.
- A copy of a 10 Day Notice to End Tenancy for unpaid rent which was served to the tenants by posting on the rental unit door on November 2, 2012.

Documentary evidence filed by the landlord indicates the tenants had failed to \$1,625 rent that was due as of November 1, 2012.

The Notice to End Tenancy states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did pay the rent by cheque dated November 5, 2012 but evidence given by landlord states that the cheque was not received until November 13, 2012. I accept the landlord's notice of the direct request proceeding on the tenants on November 15, 2012 as evidence that acceptance of the late rent did not reinstate the tenancy.

The tenants did not apply to dispute the Notice to End Tenancy within five days from the date of service which would have been November 10, 2012 taking into account the three days for deemed service of notice served by posting on November 2, 2012.

Analysis

I have reviewed all documentary evidence and accept that the tenants were served with Notice to End Tenancy as declared by the landlord.

I accept the evidence before me that the tenants failed to pay the rent owed in full within the five days granted under section 46(4) of the *Act*.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was November 15, 2012.

Therefore, I find that the landlord is entitled to an Order of Possession based on the Notice to End Tenancy of November 2, 2012.

As the November rent was paid, although late, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on November 30, 2012.

Conclusion

The landlord's copy of this Decision is accompanied by an Order of Possession effective at 1 p.m. on November 30, 2012. The 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: November 19, 2012.

Residential Tenancy Branch