



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

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 December 11, 2012, the landlord served the tenants with the notice of direct request proceeding via personal service to each of the three tenants.

Based on the written submissions of the landlord, I find that the tenants have been duly served with the direct request proceeding documents.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- 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 proceeding for the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on January 31, 2012, indicating monthly rent of \$1,400.00 due on the 31st day of the month; and
- A copy of a 10 day notice to end tenancy for unpaid rent which was issued on December 3, 2012, with a stated effective date of December 13, 2012, for \$1,400.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants had failed to pay the rent owed and was served the 10 day notice to end tenancy for unpaid rent by posting to the tenants' door on December 3, 2012 and witnessed. Section 90 of the *Act* deems the tenants were served three days later on December 6, 2012 which would correct the above-mentioned effective date to December 16, 2012.

The notice states that the tenants had five days to pay the rent in full or apply for dispute resolution or the tenancy would end 10 days from the service date. The tenants did not 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 tenants have been served with notice to end tenancy as declared by the landlord.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 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 corrected effective date of the notice. Therefore, I find that the landlord is entitled to an order of possession and a monetary order for unpaid rent.

The direct request proceeding does not permit claims for unpaid utilities. The landlord indicated \$700.00 in unpaid rent in the application amount details, however, at the bottom of the application indicate that the tenants did not pay rent in the amount of \$1,400.00. I find that the landlords are at liberty to apply for additional monetary compensation; however, not through a direct request proceeding due to the unclear amount being claimed. I accept that this application is for \$700.00 as indicated on the landlord's request for a monetary order in the amount of \$700.00.

Conclusion

I find that the landlord is entitled to an order of possession effective **two days after service** on the tenants and this order may be filed in the Supreme Court and enforced as an order of that court.

I find that the landlord is entitled to monetary compensation pursuant to section 67 in the amount of **\$700.00** comprised of rent owed.

This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord is at liberty to reapply for additional compensation not included in this application, such as unpaid utilities but should not be made through the direct request process.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 13, 2012

Residential Tenancy Branch