



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 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 due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 14, 2012 the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the written submissions of the landlord, I find that the tenant has been 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 for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 46, 55, & 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on May 25, 2012 for a tenancy beginning June 1, 2012 for the monthly rent of \$850.00 due on 1st 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 an effective vacancy date of December 13, 2012 due to \$850.00 in unpaid rent.

Documentary evidence filed by the landlord(s) indicates that the tenant(s) had failed to pay the rent owed for the month of December 2012, and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent which was posted on the door of the tenant's rental unit on December 3, 2012 and therefore is deemed served three days later.

The Notice states that the tenant(s) had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant(s) did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant(s) on December 6, 2012 and the effective date of the notice is amended to December 16, 2012 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. A \$600.00 payment was made on December 6, 2012, however that would still leave \$150.00 outstanding.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant(s)**. This order must be served on the tenant(s) and 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 section 67 in the amount of \$150.00 comprised of the remainder of the rent outstanding for December 2012. This order must be served on the tenant(s) and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The applicants had applied for at \$190.00, however there is no explanation as to what the extra \$40.00 is for, therefore I dismissed with leave to reapply, the claim for the remaining \$40.00.

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: December 20, 2012.

Residential Tenancy Branch