

DECISION

Dispute Codes

OPR, MNR

Introduction

This matter was conducted 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.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 18, 2012, at 10:34 a.m., the Landlord's agent served the Tenant with the Notice of Direct Request Proceeding by registered mail. A copy of the registered mail receipt and tracking number was provided in evidence.

Based on the written submissions of the Landlord, I find that the Tenant was deemed to be served with the Direct Request Proceeding documents on December 23, 2012, which is five days after mailing the documents further to the provisions of Section 90 of the Act.

Issue(s) to be Decided

Is the Landlord entitled to an Order of possession?

Is the Landlord entitled to monetary compensation 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 Tenant;
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent;
- A copy of a residential tenancy agreement which was signed by the parties on October 11, 2012, indicating a monthly rent of \$1,000.00 due on the first day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 6, 2012, with a stated effective vacancy date of December 16, 2012, for \$1,000.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the rent remains unpaid. The documentary evidence indicates that the Landlord's agent served the 10 Day Notice to End Tenancy for Unpaid Rent by posting the document to the Tenant's door on December 16, 2012, at 10:00 a.m. The Proof of Service document is signed by a witness.

The Notice states that the Tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenant 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 Tenant was served with Notice to End Tenancy by posting the Notice to his door on December 6, 2012. Section 90 of the Act deems service in this manner to be effective three days after posting the document, December 9, 2012.

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*.

Section 53 of the Act provides that an incorrect end of tenancy date on a Notice to End Tenancy is deemed to be changed to the date that complies with the applicable Section. 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 December 19, 2012.

Therefore, I find that the Landlord MD is entitled to an Order of Possession and a Monetary Order for unpaid rent in the amount of **\$1,000.00**.

Conclusion

Pursuant to the provisions of Section 55 of the Act, I hereby provide the Landlord an Order of Possession effective **two days after service** of the Order upon the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Pursuant to the provisions of Section 67 of the Act, I hereby provide the Landlord a Monetary Order in the amount of **\$1,000.00** for service upon the Tenant. This Order may be filed in the Provincial Court (Small Claims) 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: December 27, 2012.

Residential Tenancy Branch