

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 January 8, 2013, the landlord served the female tenant with the notice of direct request proceeding via registered mail.

Section 90 of the *Act* determines that a document served in this manner is deemed to have been served five days later.

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

Preliminary Matter

As the landlord did not submit evidence that the male tenant was served with Notice of a Direct Request Proceeding, any resulting orders will name the female tenant only.

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 female tenant;
- A copy of a residential tenancy agreement which was signed by the parties in November 2012, although the date was not included in the agreement, indicating a monthly rent of \$970.00 was due on the first day of the month, which according

to a rental subsidy document submitted, the tenants' portion was \$700.00 per month; and

- A copy of a 10 day notice to end tenancy for unpaid rent which was issued on December 4, 2012, with a stated effective vacancy date of December 14, 2012, for \$700.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants have 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 which was witnessed on December 4, 2012. Section 90 of the *Act* deems the tenants were served three days later on December 7, 2012 which would correct the above-mentioned effective vacancy date to December 17, 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. As the female tenant was the only tenant to be deemed served with the Notice of a Dispute Resolution Hearing, the female tenant is the only tenant to be named in the resulting orders.

Conclusion

I find that the landlord is entitled to an order of possession effective **two days after service** on the female tenant 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 female tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: January 14, 2013