



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 16, 2013 the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that the Landlord mailed a package to the rental unit. Section 90 of the *Act* determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is January 21, 2013.

Based on the written submissions of the Landlord, I find the Tenant has been served with the Dispute Resolution 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, pursuant to section 55 of the *Act*.

Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant.
- A copy of a residential tenancy agreement between the Landlord and the Tenant, which does not appear to be signed by the Tenant, which does not declare the start date of the tenancy; which initially indicated the Tenant must pay monthly rent of \$600.00; and which has been changed to show the Tenant must pay rent of \$700.00.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that is signed by the Landlord and is not dated, which declares that the Tenant must vacate the rental

unit by January 13, 2013 as the Tenant has failed to pay rent in the amount of \$700.00 that was due on January 01, 2012. The Notice declares that the tenancy will end unless the Tenant pays the rent or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.

- A copy of a signed Proof of Service of the 10 Day Notice to End Tenancy in which the Landlord declared that she personally served the Notice to the Tenant, in the presence of another party, who also signed the Proof of Service.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was served on January 03, 2012 and that the Tenant has not paid rent for January of 2013.

Analysis

I find that the Landlord has submitted insufficient evidence to establish that the Tenant entered into a tenancy agreement in which he agreed to pay monthly rent of \$700.00. In reaching this conclusion I was heavily influenced by the fact that the Tenant has not signed the tenancy agreement that was submitted in evidence; he has not initialed the amendment to indicate he agreed to change the rent from \$600.00 to \$700.00; and the agreement does not indicate when this tenancy started.

As the Landlord has failed to establish that the Tenant agreed to pay rent of \$700.00, I find that the Landlord has submitted insufficient evidence to establish that the Tenant has not paid the rent that was due. I therefore dismiss the Landlord's application for an Order of Possession.

Conclusion

The Landlord retains the right to serve the Tenant with another Notice to End Tenancy; to file another Application for Dispute Resolution; and to provide evidence of an oral or written tenancy agreement.

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: January 22, 2013

Residential Tenancy Branch

