



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 *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 January 22, 2013, tenant D was served with the Notice of Direct Request Proceeding via registered mail. The landlord provided a Canada Post receipt and tracking number as evidence of service. The Canada Post receipt included only the name of the tenant; the address of service was not completed or provided on the receipt.

Therefore, in the absence of a detailed address used for service I find that tenant D. has not been served with Notice of this proceeding. I am unable to assume which address that landlord used for service purposes; therefore, the application may not proceed against tenant Ab.D., as service has not been proven.

The landlord provided a Proof of service of the Notice of Direct Request Proceeding which declared that tenant A.D. was personally served with the Notice of Direct Request Proceeding on January 21, 2013, at 5:15 p.m., at the rental unit address. Therefore, I find pursuant to section 89 and 90 of the Act, that tenant A.D. was served with the Direct Request Proceeding documents.

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 a residential tenancy agreement which was signed by the parties on March 23, 2005, indicating a monthly rent of \$1,035.00 plus \$25.00 for parking due on or before the first day of the month;
- A January 7, 2013 letter indicating \$1,290.00 is owed in rent;
- A January 16, 2013 memo to the tenants indicating \$1,230 is owed for January 2013 rent, plus other fees; and
- Copies of Notice of Rent Increase given to the tenants in 2006, 2007, 2008, 2009, 2010, 2012 and January 2013. The current rent is \$1,230.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 9, 2013 with a stated effective vacancy date of January 23, 2013, for \$1,230 in unpaid January 2013 rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting the Notice to the tenant's door on January 9, 2013 at 4:27 p.m. A co-worker of the landlord's was present as a witness to posting. The Act deems the tenant was served on January 12, 2012.

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 has been served with notice to end tenancy as declared by the landlord.

The Notice is deemed to have been received by the tenant on January 12, 2013.

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. There was no evidence before me that the tenant disputed the Notice.

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; January 23, 2013.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid January 2013 rent in the sum of \$1,230.00.

I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and the 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 section 67 in the amount of \$1,230.00 for January 2013 rent owed and I grant an Order in that amount. This Order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession and monetary Order.

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 30, 2013

Residential Tenancy Branch

