



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 section 55(4) of the 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 3, 2013 at 9:30 a.m. the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the written submissions of the Landlord, I find that the Tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following evidentiary material 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 which was signed by all parties for a month to month tenancy that began on June 1, 2012, for the monthly rent of \$595.17 which is payable on the first of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, December 2, 2012, with an effective vacancy date of December 12, 2012, due to \$595.17 in unpaid rent; and
- A copy of the letter issued as a receipt for "use and occupancy only" which outlines that the Landlord received two payments towards December 1, 2012 as

follows: \$220.17 received December 7, 2012 and \$375.00 received December 10, 2012. The letter also stipulates that "10 Day Notice to End Tenancy for Unpaid Rent served on December 2, 2012 is still in effect and you are evicted".

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on December 2, 2012, when it was served personally to the Tenant at 2:00 p.m. The Tenant signed the proof of service document acknowledging receipt of the 10 Day Notice.

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 was received by the Tenant on December 2, 2012, and the effective date of the notice is December 12, 2012, pursuant to section 90 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*.

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 and I hereby grant the Landlord an Order of Possession.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenants.

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 09, 2013.

Residential Tenancy Branch

