



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 for unpaid rent 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 February 15, 2013, the landlord served the 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 tenant has been duly served with the direct request proceeding documents as of February 20, 2013.

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, and if so, in what amount?

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 October 1, 2012, indicating a monthly rent of \$850.00 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 February 2, 2013, with a stated effective vacancy date of February 12, 2013, for \$850.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the rent owed and was served the 10 day notice to end tenancy for unpaid rent by posting to the tenant's door which was witnessed on February 2, 2013. Section 90 of the *Act* deems the tenant was served three days later on February 5, 2013 which would correct the above-mentioned effective vacancy date to February 15, 2013.

The notice states that the tenant 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 tenant did not apply to dispute the notice to end tenancy within five days from the date of service.

The landlord indicates in his application that he is seeking \$400.00 in unpaid rent for February 2013, and \$850.00 for March 2013.

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.

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 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 in the amount of \$400.00 for February 2013. The landlord's request for unpaid March 2013 rent, however, is premature as March 2013 rent is not due as of the date of this decision. As a result, that portion of the landlords request is dismissed with leave to reapply.

Conclusion

I find that the landlord is entitled to an order of possession effective **two days after service** on the 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 **\$400.00** comprised of rent owed. 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.

The landlord's request for March 2013 unpaid rent is premature and dismissed with leave to reapply as a result.

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: February 21, 2013

Residential Tenancy Branch

