



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Oceanview Apartments
and [tenant name suppressed to protect privacy]

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 March 19, 2013 an agent for the Landlord served the Tenant with the Notice of Direct Request Proceeding by posting it at the rental unit. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which shows that a package was mailed to the rent unit on that date. I find it reasonable to conclude that the Notice of Direct Request Proceeding was mailed to the Tenant on March 19, 2013, and that the declaration that it was posted was simply a clerical error.

Based on the written submissions of the Landlord, I find the male Tenant has been served with the Dispute Resolution Direct Request Proceeding document. Section 90 of the *Act* stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed which, in these circumstances, is March 24, 2013.

Issue(s) to be Decided

Is the Landlord 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 which appears to be signed by the Tenant that indicates that the tenancy began on January 01, 2011 and that the rent of \$600.00 is due by the first day of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that is not signed by the Landlord and is dated January 17, 2013, which declares that the Tenant must vacate the rental unit by January 30, 2013 as he has failed to pay rent in the amount of \$1,200.00 that was due on January 01, 2013. The Notice declares that the tenancy will end unless the Tenants pay the rent within five days of receiving the Notice or submit 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 an agent for the Landlord declared that she posted the Notice on the door of the rental unit on January 17, 2013, in the presence of another person, 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 posted on January 17, 2013.

In the Application for Dispute Resolution, the Landlord declared that the Tenant has not paid rent for four months.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement that required him to pay monthly rent of \$600.00 by the first day of each month and that he had not paid all of the rent by the time the Landlord filed this Application for Dispute Resolution.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the rent is due by giving a notice to end tenancy. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was posted at the rental unit on January 17, 2013.

Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(a) of the *Act* stipulates that to be effective a notice to end tenancy must be signed and dated by the landlord or the tenant giving the notice. In the circumstances before me I find that the 10 Day Notice to End Tenancy that was posted to the Tenant's door on January 17, 2013 was not signed. I therefore find that the Notice was not effective, as the Landlord did not comply with section 52(a) of the *Act*.

Conclusion

As the Notice to End Tenancy that was posted on the Tenant's door was not effective, I dismiss the Landlord's application for an Order of Possession.

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: March 25, 2013

Residential Tenancy Branch

