



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION AND REASONS

Dispute Codes:

OPR, MNR

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 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 March 6, 2013 the landlord served each tenant with the Notice of Direct Request Proceeding by registered mail sent to the dispute address. Pursuant to section 90(a) of the Residential Tenancy Act the tenant is deemed to have been served on the fifth day after the documents were sent.

Based on the written submissions of the Landlord, I find the tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- Proof of Service of the Notice of Direct Proceeding and the 10-Day Notice to End Tenancy for Unpaid Rent.
- Copy of a residential tenancy agreement signed by the parties, on February 16, 2013, with monthly rent of \$1,000.00 and a security deposit of \$500.00,
- Copy of 10 Day Notice to End Tenancy for Unpaid Rent issued on February 27, 2013 with effective date of March 8, 2013 due to \$664.28 in unpaid rent.

No tenant ledger was submitted. Although the 10-Day Notice to End Tenancy shows that the tenant is in arrears for \$664.28 rent, the application filed by the landlord showed a claim of \$464.28, in the box reserved for the amount being claimed, with a notation

that it represents a pro-rated amount from February 16 to February 28 inclusive.

However in the "*Details of the Dispute*" section of the application, the landlord claims that rent is also owed for March 2013 in the amount of \$1,000.00 plus a \$25.00 late fee for a total claim of \$1,689.28.

The Proof of Service form indicated that the Ten-Day Notice for Unpaid Rent was served in person on February 27, 2013. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and accept that the tenant had been served with Notice To End Tenancy as declared by the landlord. I accept the evidence before me that the tenants failed to pay rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the facts, 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 the landlord is therefore entitled to an Order of Possession.

The landlord requested monetary compensation for the sum of \$464.28 but I find that this contradicts the amount of \$664.28 shown in the 10-Day Notice to End Tenancy for Unpaid Rent and the \$1,689.28 indicated in the details of the dispute.

I find that it is not possible to accurately determine what the applicable arrears are, for the purpose of issuing a monetary order. Therefore I find that the landlord's monetary claim must be dismissed.

I hereby grant the landlord an Order of Possession effective two days after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

The portion of the landlord's claim requesting a monetary order for rental arrears is dismissed without leave.

Conclusion

The landlord is partially successful in the application and is granted an Order of Possession, while the monetary claim for rental arrears is dismissed.

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 12, 2013

Residential Tenancy Branch

