



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kahl Realty & Prop. Management
and [tenant name suppressed to protect privacy]

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 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 16, 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 received five days after service.

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

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order 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 Request Proceeding;
- A copy of a residential tenancy agreement which was signed by the parties on January 19, 2013, indicating that the tenant is obligated to pay \$1350.00 in rent in advance on the first day of the month;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which the landlord served on the tenant on February 23, 2013 for \$2950.00 in unpaid rent due in the month of February; and
- A copy of the Proof of Service of the Notice to End Tenancy showing that the landlord served the notice to end tenancy on the tenant by having a witness present when posting the notice on the tenants' door.

Section 90 of the Act provides that because the notice to end tenancy was served by posting the notice, the tenant is deemed to have received the notice three days later on February 26, 2013.

The Notice restates section 46(4) of the Act which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I find that the tenant received the notice to end tenancy on February 26, 2013. I accept the landlord's undisputed evidence and I find that the tenant did not pay the rental arrears and did not apply to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

In terms of the monetary order there is a discrepancy from what the tenancy agreement states and the amount sought on the Notice. The tenancy agreement states that the tenant is to pay \$1350.00 per month; the landlord is seeking \$2950.00. The landlord has not specified in their application the amount sought for the corresponding months.

The landlord has not provided copies of receipts, rent books, rental logs or other supporting documents to support this portion of their claim.

As there is some uncertainty in the amount the landlord is seeking I dismiss this portion of the landlords' application with leave to reapply.

Conclusion

I grant the landlord an order of possession.

I dismiss the monetary portion of their claim with leave to reapply.

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: April 03, 2013

Residential Tenancy Branch

