



Dispute Resolution Services

Page: 1

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 March 27, 2013, the landlord served both tenants with the notice of direct request proceeding via registered mail using one registered mail package.

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 at least one of the tenants has been sufficiently served under the *Act*.

Preliminary and Procedural Matter

As the landlord has served both tenants in the same registered mail package, I find that each person has not been individually served, as required by section 89(1) of the *Act* and section 3.1 of the Rules of Procedure for the purposes of a monetary claim.

I find that one of the two tenants has been served for the purposes of an Order of Possession. Section 89(2) of the *Act* allows an Application requesting an Order of Possession to be sent by registered mail to the address at which the tenants’ reside; this has occurred.

As the tenants were not served with individual registered mail packages for the purposes of the monetary claim, **I dismiss the landlord’s monetary claim with leave to reapply.**

I will proceed with the landlord's request for an order of possession for unpaid rent.

Issue to be Decided

- Is the landlord entitled to an order of possession 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 proceeding for the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on October 18, 2012 indicating a monthly rent of \$1,450.00 due on the last day of the preceding month in which rent is due; and
- A copy of a 10 day notice to end tenancy for unpaid rent which was issued on March 11, 2013, with a stated effective vacancy date of March 21, 2013 for \$1,450.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants had failed to pay the rent owed and was served the 10 day notice to end tenancy for unpaid rent by posting to the tenants' door which was witnessed on March 11, 2013. Section 90 of the *Act* deems the tenants were served three days later on March 14, 2013 which would correct the above-mentioned effective vacancy date to March 24, 2013.

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

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord.

I accept the evidence before me that the tenants have 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 tenants are 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 for unpaid rent.

Conclusion

I find that the landlord is entitled to an order of possession effective **two days after service** on the tenants and this order may be filed in the Supreme Court and enforced as an order of that court.

The landlord is at liberty to reapply for a monetary claim and is reminded to serve each tenant individually when applying for a monetary order.

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: April 03, 2013

Residential Tenancy Branch

