



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 deals 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 April 11, 2013, the Landlord served the Tenant with Notice of Direct Request Proceeding by registered mail.

The Landlord also submitted a copy of the 10 day Notice to End Tenancy for Unpaid Rent (the “Notice”) that indicates an effective date of April 11, 2013 and proof of service that indicates that the Notice was personally served on the Tenant on April 2, 2013.

Section 46 of the Act provides if a tenant who has received a 10 day notice to end tenancy for unpaid rent does not pay the rent within 5 days of receiving the notice or make an application for dispute resolution in accordance within 10 days receipt of the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must move out of the unit by that date.

Given that the Tenant did not dispute the Notice, and considering that the Landlord submitted no evidence that the Tenant was still in the unit when the application was served by registered mail, I find that the Tenant may have acted in accordance with the

Act and moved out of the unit on or before April 11, 2013. It cannot be found on a balance of probabilities therefore, without additional proof, that the Tenant was still a resident of that unit on the date of presumed receipt of the application. As such, I cannot find that the Tenants have been served with the application as required under the Act. I therefore dismiss this application with leave to reapply under the participatory hearing process.

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 18, 2013

Residential Tenancy Branch