



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Domus Management
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 April 15, 2013 an agent for the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that declaration. Section 90 of the *Act* determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is April 20, 2013.

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

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession?

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 between the Landlord and the Tenant, which appears to be signed by the Tenant, that indicates that the tenancy began on December 01, 2011 and that the Tenant was required to pay rent of \$795.00 by the first day of each month.
- A Notice of Rent Increase that shows the rent was increased to \$829.00, effective December 01, 2012.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by an agent for the Landlord and dated April 04, 2013, which declares that the Tenant must vacate the rental unit by April 18, 2013, as the Tenant has failed to pay rent in the amount of \$844.00 that was due on April 01, 2013. The Notice declares that the tenancy will end unless the Tenant pays the rent or submits 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 the agent posted the Notice on the Tenant's door on April 04, 2013, in the presence of another party, 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 April 04, 2013.

In the Application for Dispute Resolution the Landlord declared that it was seeking an Order of Possession due to unpaid rent, however the Landlord does not declare how much, if any rent, was outstanding at the time the Application for Dispute Resolution was filed.

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 the Tenant to pay monthly rent of \$795.00 by the first day of each month, and that the rent was increased to \$829.00, effective December 01, 2012.

On the basis of the information on the Ten Day Notice to End Tenancy, I find that the Tenant had not paid rent when it was due on April 01, 2013

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Ten Day Notice to End Tenancy was posted at the rental unit on April 04, 2013. Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on April 07, 2013.

I find that I have insufficient evidence to show that the Tenant did not pay the rent after receiving the Ten Day Notice to End Tenancy. In reaching this conclusion I was heavily influenced by the absence of any evidence, such as a rent ledger or a declaration that rent is still outstanding, to show that the rent was in arrears after April 04, 2013.

Section 44(a) of the *Act* stipulates that a tenant may pay the overdue rent within five days of receiving a Ten Day Notice to End Tenancy, in which case the Notice has no effect. As I have insufficient evidence to determine whether the overdue rent was paid within five days of receiving the Ten Day Notice to End Tenancy, I cannot conclude that

the Notice to End Tenancy is enforceable. I therefore dismiss the Landlord's application for an Order of Possession.

Conclusion

The Landlord retains the right to serve the Tenant with another Ten Day Notice to End Tenancy if rent is not paid when it is due.

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 24, 2013

Residential Tenancy Branch

