



Dispute Resolution Services

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 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, 2012, the landlord served the tenant with the Notice of Direct Request Proceeding by posting it to the door of the rental unit.

Section 89 of the Act specifies the means by which certain documents must be served. While a claim for an order of possession may be served on the tenant by posting it to a door, an application for a monetary order may not. I find that the landlord failed to properly serve the Notice of Direct Request Proceeding as it pertains to the monetary order and I dismiss the claim for a monetary order with leave to reapply.

I find that the tenant has been duly served with the Direct Request Proceeding documents as they pertain to the order of possession and I find that pursuant to section 90, the tenant is deemed to have received those documents 3 days after service on April 14, 2012.

Issues to be Decided

Is the landlord entitled to an order of possession?

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 September 26, 2012, indicating that the tenant is obligated to pay \$790.00 in rent in advance on the first day of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") which the landlord served on the tenant on April 2, 2013 for \$790.00 in unpaid rent due in the month of April; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice on the tenant by posting the Notice to the door of the rental unit.

Section 90 of the Act provides that because the Notice was served by posting, the tenant is deemed to have received the Notice 3 days later on April 5, 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 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 on April 5, 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.

Conclusion

I grant the landlord an order of possession. The monetary claim is dismissed 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 16, 2013

Residential Tenancy Branch

