



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 dealt with an application for dispute resolution by the landlord for an order of possession for unpaid rent and utilities, and a monetary order for unpaid rent and utilities.

The landlord submitted a signed proof of service of the notice of direct request proceeding which declares that on April 17, 2013, the landlord served the tenant with the notice of direct request proceeding via personal service at the rental unit at 10:03 a.m.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the direct request proceeding documents.

Preliminary Matter

Although the landlord has applied for \$256.60 in unpaid utilities, as per Residential Tenancy Guideline #39 – Direct Requests, the Direct Request process does not provide for claims for unpaid utilities. Furthermore, in accordance with section 46(6) of the *Act*, the landlord failed to submit documentary evidence that the landlord provided the tenant with a written demand for \$256.60 in unpaid utilities. Therefore, **I dismiss** the unpaid utilities portion of the landlord’s monetary claim **with leave to reapply**. The landlord is reminded not to apply through the direct request process for unpaid utilities in the future. The landlord must make an application for unpaid utilities through the conventional participatory hearing process when claiming for unpaid utilities.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent, and if so, in what amount?

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 tenant;
- A copy of a residential tenancy agreement which was signed by the parties on June 5, 2012, indicating a monthly rent of \$1,050.00 due on the first day of the month; and
- A copy of a 10 day notice to end tenancy for unpaid rent which was issued on April 6, 2013, with a stated effective vacancy date of April 17, 2013, for \$3,325.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the rent owed and was served the 10 day notice to end tenancy for unpaid rent by personal service on April 6, 2013 at 11:27 a.m. which was witnessed by a third party, PC.

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

A detailed ledger was submitted supporting the unpaid rent as listed on the 10 Day Notice as \$3,325.00

Analysis

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

I accept the evidence before me that the tenant has 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 tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the

notice. Therefore, I find that the landlord is entitled to an order of possession and a monetary order for unpaid rent.

Conclusion

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

I find that the landlord is entitled to monetary compensation pursuant to section 67 in the amount of **\$3,325.00** comprised of rent owed. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord has leave to reapply for unpaid utilities as unpaid utilities cannot be claimed through the direct request process.

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: May 30, 2013

Residential Tenancy Branch

