



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter was conducted by way of a Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act* in response to an application made 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 which declares that on May 14, 2013 the landlord served each tenant separately with the Notice of Direct Request by registered mail. Section 90 of the *Act* provides that a document is deemed to have been served 5 days after mailing. Based on the written submissions of the landlord, I find that the tenants have been served with the Notice of Direct Request proceeding requesting an Order of Possession and a monetary order.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent?
Has the landlord established a monetary claim against the tenants for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement detailing the landlord's name and landlord's agent. This was signed by the landlord's agent and both tenants on March 7, 2013 for a tenancy commencing on April 1, 2013 for the monthly rent of \$600.00 payable on the first day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which was issued on May 2, 2013 with an effective vacancy date of May 13, 2013 due to \$2000.00 in unpaid rent which was due on May 1, 2013 (both pages of the 2-page form have been provided);

- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which states that the tenant was served with the notice on May 2, 2013, by posting it to the door of the rental unit; and
- The Landlord's Application for Dispute Resolution which was made on May 10, 2013, showing a claim of \$1600.00 in outstanding rent.

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 on May 2, 2013, by posting it to the door of the rental unit which was witnessed by a friend. The *Act* states that documents served in this manner are deemed to have been served 3 days after such posting. Therefore, I find that the tenants are deemed to be served on May 5, 2013, and the effective date of vacancy is automatically changed to May 15, 2013, pursuant to Section 53(1) of the *Act*.

I accept the evidence before me that the tenants have failed to dispute the notice or pay the rent owed in full within the 5 days granted under section 46(4) of the *Act*. As a result, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on May 14, 2013. Therefore, the landlord is entitled to an Order of Possession.

However, in relation to the monetary claim for \$1600.00 by the landlord in the Application for Dispute Resolution, there is insufficient details/evidence submitted with the application to explain what the \$1600.00 monetary claim comprises of. According to the written tenancy agreement submitted, the tenancy began on April 1, 2013, and the notice to end tenancy was issued the following month for an amount totaling more than 2 months of rent. Therefore, I am unable to understand how this amount was reached by the landlord and as a result I am unable to grant a monetary order with respect to the claim for unpaid rent.

Conclusion

For the above reasons, I find that the landlord is entitled to an Order of Possession which is effective **2 days after service on the tenant**. This order must be served on the tenant and may be filed and enforced in the Supreme Court as an order of that Court.

The landlord's application for a monetary order for unpaid rent is hereby 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: May 24, 2013

Residential Tenancy Branch