



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westcorp Properties Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR & MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 22, 2013 the landlord served the tenant with the Notice of Direct Request Proceeding by hand.

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

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on November 16, 2012 for a tenancy beginning December 01, 2012 for the monthly rent of \$750.00 due on the 1st of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, April 09, 2013 with an effective vacancy date of April 22, 2013 due to \$1,900.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the full rent owed for the months of March and April, 2013 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by hand on April 09, 2013.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days.

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. The notice is deemed to have been received by the tenant on April 09, 2013.

The tenancy agreement indicates rent is \$750.00 per month whereas the landlord's application is for \$1,900.00 for March and April. Documentary evidence indicates that late fees have also been included in this charge of \$25.00 per month. The landlord has provided no further evidence to show what the additional amount claimed of \$400.00 is for. A landlord is not permitted to recover late fees under the direct request process and where rent has been legally increased since the tenancy commenced it is necessary for the landlord to provide evidence of such rent increases to substantiate rent owing is greater than that indicated in the tenancy agreement.

I therefore accept the evidence before me that the tenant has failed to pay the rent owed for March and April of \$1,500.00 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.

Conclusion

I find that the landlord is entitled to an Order of Possession pursuant to section 55 effective **two days after service on the tenant**. This order must be served on the tenant and 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 **\$1,500.00** for 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.

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 02, 2013

Residential Tenancy Branch

