



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 an *ex parte* 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 based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declared that on June 5, 2013, the landlord handed the tenant the Notice of Direct Request Proceeding.

Based on the written submissions of the landlord and in accordance with sections 88 and 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on June 5, 2013.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding served to the tenant;
- A copy of a Residential Tenancy Agreement (the Agreement), which was signed by the landlord and the tenant on August 25, 2012. According to the Agreement, monthly rent was set at \$1,000.00, payable in advance on the 1st day of the month commencing on September 1, 2012. Both parties also initialed a

statement on the copy of this Agreement entered into written evidence by the landlord that “This agreement has been amended to reflect the current situation as of March 30, 2013”;

- A document entitled “History of Rent and Utilities...” for this tenancy in which the landlord outlined amounts owing for rent and utilities and payments made until May 15, 2013; and
- A copy of a 10 Day Notice posted on the tenant's door on May 27, 2013, with a stated effective vacancy date of June 6, 2013, for \$1,998.23 in unpaid rent.

Witnessed documentary evidence filed by the landlord stated that the 10 Day Notice was posted on the tenant's door at 7:30 p.m. on May 27, 2013. In accordance with sections 88 and 90(c) of the *Act*, I find that the tenant was deemed to have been served with this 10 Day Notice on May 30, 2013, the third day after its posting on her door.

The Notice states that the tenant had five days from the date of service to pay the amount identified as owing in full 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 from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlords. The landlord's written evidence stated that the Proof of Service of the Notice of Direct Request document was handed to the tenant on June 5, 2013.

I accept the evidence before me that the tenant has failed to pay the rent identified as owing in the 10 Day Notice in full within the 5 days granted under section 46 (4) of the *Act*. I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the Notice, June 9, 2013. Therefore, I find that the landlord is entitled to a 2-day Order of Possession.

While I have given careful consideration to the landlord's application for a monetary Order, I find that the landlord's evidence with respect to charges owing and payments made for rent and utilities is too unclear to address without the benefit of a participatory hearing. The landlord has accepted payments from the tenant on February 2, 2013, February 28, 2013, March 28, 2013, April 19, 2013, and May 1, 2013. The landlord's only evidence with respect to the amounts owed and payments made was in the form of her own document entitled “History of Rent and Utilities” for this tenancy. She has not

provided copies of invoices, utility bills or receipts. There is no indication as to whether the tenant has agreed to the landlord's direction of the above-noted five payments to the mix of rent and utilities claimed in the landlord's document. There is no certainty that the tenant agreed with the landlord's apportionment of some of her payments to outstanding utilities. In this regard, the Agreement submitted into written evidence by the landlord is silent as to the tenant's responsibility for utilities. In fact, I find that the pattern of the tenant's payments suggest that she was intending to make at least some of her payments towards her rent (e.g., \$1,100.00 payment of February 28, 2013; \$1,000.00 payment of May 1, 2013) and that there may be disagreement between the parties as to the landlord's direction of some of her payments towards utility charges.

The direct request process can only be utilized to consider an application for a monetary award for unpaid rent. As there is a lack of clarity as to whether portions of the landlord's application in fact request a monetary award for unpaid utilities as well as unpaid rent, I am adjourning the landlord's application for a monetary award to be reconvened as a participatory hearing.

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 adjourn the landlord's direct request application for a monetary Order to be reconvened at a participatory hearing in accordance with section 74 of the *Act*. I find that a participatory hearing of this portion of the landlord's application is required in order to determine the details of the landlord's application. **Notices of Reconvened Hearing are enclosed with this decision for the landlord/applicant to serve, with all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 88 of the *Act*.**

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: June 10, 2013

Residential Tenancy Branch

