



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

Introduction

This matter was conducted 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.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 18, 2013, the Landlord served the female Tenant with the Notice of Direct Request Proceeding by registered mail to the rental unit. The Landlord provided a copy of the registered mail receipt and tracking number in evidence.

Based on the written submissions of the Landlord, I find that the female Tenant has been served with the Direct Request Proceeding documents. The Landlord did not provide evidence of service upon the male Tenant.

Sections 88 and 89 of the Act determine the method of service for documents. The Landlord has applied for a Monetary Order which requires that the Landlord serve both of the Tenants as set out under Section 89(1). In this case the Landlord did not provide evidence of service of the Notice of Direct Request Proceeding documents upon the male Tenant. As the service of the Notice of Direct Request Proceeding documents upon the male Tenant has not been proven as required by Section 89(1) of the Act, the Landlord's claim against the male Tenant is dismissed without leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to monetary compensation for unpaid rent?

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding upon the female Tenant;
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent;
- A copy of a residential tenancy agreement which was signed by the Landlord and the female Tenant on April 26, 2012, indicating a monthly rent of \$1,200.00 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 June 4, 2013, with a stated effective vacancy date of June 15, 2013, for \$1,200.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the June rent remains unpaid. The documentary evidence indicates that the Landlord served the 10 Day Notice to End Tenancy for Unpaid Rent by posting the document to the Tenants' door on June 4, 2013, at 5:30 p.m. The Proof of Service document is signed by a witness.

The Notice states that the Tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenants 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 Tenants were served with Notice to End Tenancy on June 4, 2013, by posting the Notice on their door. Service in this manner is deemed to be effective 3 days after posting, June 7, 2013.

I accept the evidence before me that the Tenants have failed to pay the June rent in full within the 5 days granted under Section 46 (4) of the *Act*.

Section 53 of the *Act* provides that an incorrect end of tenancy date on a Notice to End Tenancy is deemed to be changed to the date that complies with the applicable Section. Based on the foregoing, I find that the Tenants are conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on June 17, 2013.

Therefore, I find that the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent for the month of June, 2013, in the amount of **\$1,200.00**.

Conclusion

The Landlord did not provide evidence that the male Tenant was served with the Notice of Hearing documents and therefore his application for a Monetary Order against the male Tenant for an Order of Possession and a Monetary Order for unpaid rent for the month of June, 2013, is **dismissed**.

Pursuant to the provisions of Section 55 of the Act, I hereby provide the Landlord an Order of Possession effective **two days after service** of the Order upon the female Tenant. The Order names the female Tenant and all occupants or guests. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Pursuant to the provisions of Section 67 of the Act, I hereby provide the Landlord a Monetary Order in the amount of **\$1,200.00** for service upon the female Tenant. This Order 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: June 24, 2013

Residential Tenancy Branch

