



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 and a monetary order for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 19, 2013, the landlord served the tenant with the Notice of Direct Request Proceeding via posting on the tenant’s door.

Section 90 of the Act determines that a document served in this manner is deemed to have been received three days after service.

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

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order 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 Request Proceeding;
- A copy of a residential tenancy agreement which was signed by the parties on January 2, 2013, indicating that the tenant is obligated to pay \$1400.00 in rent in advance on the first day of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which the landlord served on the tenant on June 2, 2013 for \$1400.00 in unpaid rent due in the month of June 2013; and
- A copy of the Proof of Service of the Notice to End Tenancy showing that the landlord served the notice to end tenancy on the tenant by having a witness present when posting the notice on the tenant's door.

Section 90 of the Act provides that because the notice to end tenancy was served by posting on the door, the tenant is deemed to have received the notice three days later on June 5, 2013.

The Notice restates section 46(4) of the Act which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I find that the tenant received the notice to end tenancy on June 5, 2013. I accept the landlord's undisputed evidence and I find that the tenant did not pay the rental arrears and did not apply to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

The landlord is also seeking a monetary order for \$1400.00. On the "Proof of Service of the Notice of Direct Request" it clearly states under the service section if someone posts that notice on the door "**Note: Do not use this method if requesting a Monetary Order**". The landlord posted the notice on the door. In addition; the tenancy agreement that the landlord submitted does not indicate the frequency of rental payments nor does it state which day it is due. For all of the above I dismiss the monetary portion of the landlords claim with leave to reapply.

Conclusion

I grant the landlord an order of possession.

I dismiss the landlords claim for a monetary order 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: July 02, 2013

Residential Tenancy Branch