



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 July 10, 2013, the landlord served the tenant with the Notice of Direct Request Proceeding via personal service.

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

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 46, 55 and 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 for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on June 1, 2013, indicating a monthly rent of \$1,095.00 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 July 2, 2013 with a stated effective vacancy date of July 12, 2103, for \$1,360.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay all rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery on July 2, 2013, which was witnessed.

The Notice states that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end from the service date. 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 landlord.

The landlord has applied for a monetary order in the amount of \$1,155.00. The detail of dispute the landlord writes "Rent owing \$1,360 and they paid \$400.00 Balance owing \$1155.00". However, when those amounts are calculated $\$1,360.00 - \400.00 the balance equals \$960.00. Further, the receipt issued on July 8, 2013, for use and occupancy indicates there is balance owing of \$950.00, leaving three different amounts owing for rent due.

Base on the above, I am satisfied that the tenant has not paid all rent owed within the 5 days granted under section 46 (4) of the *Act* and the tenant did not dispute the notice. Therefore, 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. Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid rent

However, I find due to the discrepancy in the amount claimed for unpaid rent that I am unable to determine the actual amount owed as the evidence provided by the landlord is conflicting. As a result the landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

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.

The landlord's application for a monetary order for unpaid rent is 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: July 12, 2013

Residential Tenancy Branch

