



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DIRECT REQUEST DECISION

Dispute Codes

OPR, MNR

Introduction

The Hearing proceeded 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 for rental arrears.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 1, 2013 the landlord served each of the two co-tenants with the Notice of Direct Request Proceeding by registered mail, which under the Act is deemed to be received in five days.

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

Preliminary Matter

The Fact Sheet containing directions and listing the requirements to apply for a resolution under this section, states that the following mandatory documentation must accompany the Application:

- Copy of the 10 Day Notice to End Tenancy;
- Copy of the Tenancy Agreement signed by the parties ; and
- Proof of Service of the 10 Day Notice to End Tenancy.

Submitted into evidence was a copy of the tenancy agreement showing rent set at \$875.00 per month and a security deposit in the amount of \$437.50. Although the tenancy agreement shows two co-tenants named as occupants, this tenancy agreement was only signed on June 25, 2013 by one of these co-tenants, who had been identified in the style of cause. The second co-tenant named as respondent in the landlord's application had not signed the tenancy agreement.

In this instance, I find that the landlord had complied with the requirements for a direct request proceeding by submitting a copy of the tenancy agreement, but the agreement was only signed by one of the two respondent co-tenants. Therefore, I find that the request for a Monetary Order must only proceed against the tenant who signed the agreement.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a monetary Order for rental arrears pursuant to 55 and 67 of the *Residential Tenancy Act (the Act)*?

Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a copy of the Notice to End Tenancy for Unpaid Rent and a "Proof of Service" form stating that the Notice was served to the tenant by posting it on the door on July 12, 2013, at 11:00 a.m. in front of a witness.

The purpose of serving documents under the *Act* is to notify the person of a failure to comply with the Act and of their rights in response. The landlord, seeking to end the tenancy has the burden of proving that the tenant was served with the Notice to End Tenancy and I find that the landlord has met this burden.

Analysis

The landlord submitted written testimony indicating that the tenant had fallen into arrears for January 2013 in the amount of \$875.00, April in the amount of \$875 and July in the amount of \$437.50.

However, according to the evidence submitted by the landlord, the tenancy agreement, was not signed by the parties until June 25, 2013.

Given the inconsistency in the date that the tenancy agreement was to begin, shown as February 1, 2013, the date that the tenancy agreement was signed, on June 25, 2013 which and the dates for which the landlord is claiming rental arrears, including January, April and July 2013, I find that the landlord's monetary claim is not sufficiently clear and I find that I am therefore not prepared to grant the requested monetary order.

However, with respect to the landlord's request for an Order of Possession based on the landlord's evidence, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Given the above facts I find that the landlord is entitled to an Order of Possession.

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby dismiss the portion of the application requesting that monetary order without leave.

Conclusion

The landlord is partly successful in the application and is granted an Order of Possession based on the Ten Day Notice to End Tenancy for Unpaid Rent.

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: August 12, 2013

Residential Tenancy Branch