



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLLIERS MACAULAY NICOLLS INC
and [tenant name suppressed to protect privacy]

DIRECT REQUEST DECISION

Dispute Codes: OPR, MNR

Introduction

This application proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act. The landlord seeks an Order of Possession and a monetary order for rental arrears based on a 10-Day Notice to End Tenancy for Unpaid Rent. The landlord also seeks anticipated loss of rent for the month of September 2013.

Preliminary Matter

I find that the landlord's claim for rental arrears, under section 26 of the Act, appears to include both a claim for rental arrears as well as a monetary claim for anticipated arrears for September or future loss of revenue.

An application under section 55(4) only pertains to an Order of Possession and rent owed, and does not permit consideration of a monetary order for other damages or enforcement of other provisions of the Act. Accordingly, I find I must decline to consider the landlord's monetary claims in my consideration of this Direct Request application.

However, the landlord is at liberty to make an application for a participatory hearing to deal with the monetary claims, including damages and loss.

The portion of the landlord's application dealing with the monetary claim is therefore dismissed with leave to reapply. The portion of the application relating to the landlord's request for an Order of Possession will proceed and a determination will be made with respect to whether or not this tenancy should end.

Background and Evidence

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 23, 2013, the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Residential Tenancy Act, (*the Act*), determines that a document is deemed to have been served on the fifth day after it was sent.

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

Issue(s) to be Decided

Is the landlord is entitled to an Order of Possession 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 and Proof of Service of the Ten-Day Notice, verifying service to the tenant,
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on August 12, 2013 for \$1,828.00.00 in rental arrears and \$25.00 "*late payment fee*", and
- A copy of a residential tenancy agreement which was signed by the parties on September 2011,
- A Notice of Rent Increase confirming that the rent is \$1,384.00 per month, due on the first day of each month.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay rent owed for the month of August 2013 and the landlord is seeking an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

Analysis

Based on the evidence before me, I find that the tenant was duly served with a Notice to End Tenancy for Unpaid Rent by posting it on the tenant's door on August 12, 2013. The Notice states that the tenant has five days to pay the rent to cancel the Notice or to apply for Dispute Resolution to dispute the Notice. I find that the tenant did not apply to dispute the Notice to End Tenancy within five days and did not pay the arrears within five days.

I find that the tenant 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 grant the landlord an Order of Possession 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 landlord's monetary claim with leave to reapply for a participatory hearing.

Conclusion

The landlord is partly successful in the application and is granted an Order of Possession. The portion of the landlord's application containing the monetary claims 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: September 05, 2013

Residential Tenancy Branch

