



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gupbarb Groups Holdings Ltd.
and [tenant name suppressed to protect privacy]

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; it declared that on August 27, 2013, the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail.

Pursuant to Section 90 of the *Residential Tenancy Act* a document served in this manner is deemed to have been served five days later.

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

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary order for unpaid rent and if so, in what amount?

Background and Evidence

The landlord submitted the following documents:

- 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 August 19, 2011, providing for a monthly rent of \$725.00 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 August 13, 2013 with a stated effective vacancy date of August 23, 2013, for \$4,675.00 in unpaid rent.
- a copy of a letter from the landlord setting out rental arrears accumulated over the period from September, 2012 to August 2013

Documents filed by the landlord established that the tenant failed to pay all rent owed and she was personally served the 10 Day Notice to End Tenancy for Unpaid Rent on August 13, 2013.

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

I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, 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 for unpaid rent.. The landlord claimed a monetary order in the amount of \$4,650.00, but the landlord has made a previous application by direct request for an order for possession and a monetary order. On May 3, 2013 the landlord was granted a monetary order for rental arrears in the amount of \$3,250.00. The previous order is valid and subsisting and it covers monetary amounts claimed by the landlord in this application. I find that the landlord has not provided evidence to establish the proper amount of a monetary order to be granted on this application. The landlord's application for a monetary order is therefore 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 application for a monetary order 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 12, 2013

Residential Tenancy Branch

