



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SY Fong Holdings Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR, MNR

Introduction

This matter was conducted 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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 13, 2013 the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail, sent to the rental unit address. The landlord provided Canada Post receipts and tracking numbers as evidence of service to each tenant. Section 90 of the Act determines that a document is deemed to have been served on the 5th day after mailing.

Based on the written submissions of the landlord, I find that each tenant has been served with the Direct Request Proceeding documents; effective August 18, 2013.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to monetary compensation 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 for the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on June 29, 2013, indicating a monthly rent of \$1,700.00 due on the 1st day of each month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on August 2, 2013 with a stated effective vacancy date of August 12, 2013, for \$1,700.00 in unpaid August 2013 rent.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting to the tenant's door on August 2, 2013 at 9:20 a.m. with the maintenance/groundskeeper present as a witness. The Proof of Service document supplied as evidence was signed by the witness, confirming service occurred.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end.

The landlord has claimed compensation for unpaid rent in the sum of \$1,700.00.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord.

The Notice is deemed to have been received by the tenants on August 5, 2013; 3 days after the Notice was posted to the door.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to August 15, 2013.

I accept the evidence before me that the tenants have failed to pay the August 2013 rent owed in full within the 5 days granted under section 46 (4) of the *Act*. There was no evidence before me that the tenants applied to cancel the Notice.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice; August 15, 2013.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid August 2013 rent in the sum of \$1,700.00.

I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of Possession effective **two days after service** on the tenants and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of \$1,700.00 for August 2013 rent owed and I grant an Order in that amount. This Order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession and a monetary Order.

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 03, 2013

Residential Tenancy Branch

