



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 September 13, 2013, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail.

Section 90 of the Act determines that 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

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 March 1, 2013, indicating a monthly rent of \$525.00 due on the first day of the month;
- 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 \$525.00 in unpaid rent; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 1, 2013, with a stated effective vacancy date of September 10, 2013, for \$525.00 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 in August by personal delivery on August 2, 2013. The Landlord has provided evidence he served the Tenant with a second 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door on September 1, 2013. Section 90 of the Act deems the tenant was served on September 4, 2013.

Both Notices state that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end 10 days 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 the August Notice to End Tenancy as declared by the landlord. I do not find that the September 1, 2013 is valid, as it was served on the first day of the month, which is the date the rent is due and was therefore, premature. The Landlord should have served the September Notice notice no sooner than September 2, 2013.

Nevertheless, I accept the evidence before me that the tenant has failed to pay the August rent owed in full on the first day of the month or within the 5 days granted under section 46 (4) of the Act, and therefore, I find the tenant is conclusively presumed to have accepted the end of the tenancy under section 46(5) of the Act. Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid rent for one month.

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.

I find that the landlord is entitled to monetary compensation pursuant to section 67 in the amount of **\$525.00** comprised of rent owed for one month.

This Order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 18, 2013

Residential Tenancy Branch

