



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hume Investments Ltd.
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 September 16, 2013, at 2:00 p.m., the Landlord’s agent served the Tenant with the Notice of Direct Request Proceeding by handing the documents to the Tenant at the rental unit. The Proof of Service document is signed by a witness.

Based on the Landlord’s written submissions, I find that the Tenant has been 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 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 Tenant;
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent;

- A copy of a residential tenancy agreement which was signed by the parties on January 21, 2013, indicating a monthly rent of \$700.00 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 September 2, 2013, with a stated effective vacancy date of September 12, 2013, for \$700.00 in unpaid rent.

Documentary evidence filed by the Landlord on September 16, 2013, does not make it clear if the Tenant still owes the total amount of rent or has made any payment towards the arrears (the Landlord has asked for a monetary order, but has not filled in the amount sought on the Application). The documentary evidence indicates that the Landlord served the 10 Day Notice to End Tenancy for Unpaid Rent by posting the document to the Tenant's door on September 2, 2013, at 9:00 a.m. The Proof of Service document is signed by a witness.

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 Notice to End Tenancy was posted to the Tenant's door on September 2, 2013. Service in this manner is deemed to be effected 3 days after posting the document, in this case September 5, 2013

I accept the evidence before me that the Tenant failed to pay the total amount of rent owed in full within the 5 days granted under Section 46 (4) of the *Act*. However, the Landlord has not provided sufficient documentary evidence with respect to the amount that is owed. Therefore this portion of the Landlord's application is dismissed with leave to reapply.

Section 53 of the *Act* provides that an incorrect end of tenancy date on a notice to end the tenancy is deemed to be changed to the earliest date that complies with 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 September 15, 2013.

Therefore, I find that the Landlord is entitled to an Order of Possession.

Conclusion

Pursuant to the provisions of Section 55 of the *Act*, I hereby provide the Landlord with an Order of Possession effective **two days after service** of the Order upon the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

The Landlord's 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 23, 2013

Residential Tenancy Branch

