



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nacel Properties 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 Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 18, 2013 the landlord served the tenants with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Residential Tenancy 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 tenants have been served with the Dispute Resolution Direct Request Proceeding documents.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on July 20, 2005 for a tenancy beginning August 01, 2005 for the monthly rent of \$750.00 due on the 1st of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, October 08, 2013 with an effective vacancy date of October 16, 2013 due to \$877.00 in unpaid rent.
- Two legal rent increase notices for 2007 and 2008. Two other rent increase notices that are blank.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay the full rent owed for the month of October and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent which was posted on the door of the tenants rental unit on October 08, 2013 and therefore is deemed served three days.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days.

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 October 11, 2013 and the effective date of the notice is amended to October 21, 2013 pursuant to section 53 of the *Act*. However, the tenancy agreement indicates rent is \$750.00 per month and the rent increase documents show rent was increased in 2007 to \$811.00 and in 2008 to \$841.00; whereas the landlord's application indicates rent is payable of \$877.00 for October. Where rent has been legally increased since the tenancy commenced it is necessary for the landlord to provide evidence of such rent increases to substantiate rent owing is greater than that indicated in the tenancy agreement or other evidence to substantiate the amount of rent claimed by the landlord. As the landlord has not provided documents showing that legal rent increases have taken place during the tenancy which has increased the rent beyond \$841.00 then I must limit the landlords claim for unpaid rent for October to \$841.00.

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.

Conclusion

I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the Act, effective **two days after service on the tenants**. This order must be served on the tenants and 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 of the Act, in the amount of **\$841.00** for rent owed. 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.

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: October 28, 2013

Residential Tenancy Branch

