



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 for unpaid rent 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 October 19, 2013, the landlord served the tenants with the notice of direct request proceeding via personal service at the rental unit on tenant BW on October 19, 2013 at 12:30 p.m., and on tenant JG on October 18, 2013 at 6:00 p.m.

Based on the written submissions of the landlord, I find that the tenants have been duly served with the direct request proceeding documents as of the latter of the two dates described above, October 19, 2013.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order 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 request proceeding for the tenants;
- A copy of a residential tenancy agreement which was original signed by the parties on January 28, 2012 and renewed on January 28, 2013 as a month to

month tenancy, indicating a monthly rent of \$2,880.00 which the due date defaults to the first day of the month as the day of the month was left blank on the tenancy agreement; and

- A copy of a 10 day notice to end tenancy for unpaid rent which was issued on October 5, 2013, with a stated effective vacancy date of October 5, 2013, for \$4,880.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants had failed to pay the rent owed and was served the 10 day notice to end tenancy for unpaid rent by personal service on both tenants on October 5, 2013 at 3:00 p.m. at the rental unit, which was witnessed by third party, SW. The effective vacancy date automatically corrects under the *Act* to October 15, 2013, which is 10 days after the date the tenants were personally served on October 5, 2013.

The notice states that the tenants 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 tenants did not apply to dispute the notice to end tenancy within five days from the date of service.

The landlord writes in their application that the tenants owe \$2,000.00 for the remaining portion of September 2013 rent, and \$2,880.00 for October 2013 rent.

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.

I accept the evidence before me that the tenants have 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 tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the notice, October 15, 2013. Therefore, I find that the landlord is entitled to an order of possession for unpaid rent and a monetary order for unpaid rent.

Conclusion

I find that the landlord is entitled to an order of possession effective **two (2) days after service** on the tenants 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 **\$4,880.00** comprised of 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 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: October 25, 2013

Residential Tenancy Branch

