



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter was conducted by way of a Direct Request Proceeding, pursuant to Section 55(4) of the Residential Tenancy Act (referred to as the Act) in response to an application made 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 which declares that on November 18, 2013 the landlord served the tenants personally with the Notice of Direct Request. Based on the written submissions of the landlord, I find that the tenants have been served with the Notice of Direct Request Proceeding requesting an Order of Possession and a Monetary Order.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?
Has the landlord established a monetary claim against the tenants for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on December 24, 2012 for a tenancy commencing on February 1, 2013 for the monthly rent of \$1,400.00 payable on the first day of each month;
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in which the landlord declares that the tenants were personally served the notice on November 6, 2013. The landlord declares on this document

that the tenant acknowledged receipt of the notice to end tenancy by signing the bottom of the first page;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on November 6, 2013 with an effective vacancy date of November 16, 2013 due to \$1,415.00 in unpaid rent due on November 1, 2013. Both pages of the approved form was provided and the first page contains the tenant's signature and acknowledgement of receipt of the notice which states "Received this 6th day of November, 2013"; and
- The Landlord's Application for Dispute Resolution which was made on November 18, 2013 claiming \$1,415.00. The details section states that the tenant owes \$1,400.00 in outstanding rent for November, 2013 and \$15.00 for a Non Sufficient Funds (NSF) fee in relation to the bounced cheque for the same month.

Analysis

I have reviewed all the documentary evidence and accept that the tenant was personally served the notice to end tenancy on November 6, 2013 based on the landlord's declaration and the tenant's acknowledgment declared on the notice to end tenancy.

I accept the evidence before me that the tenants failed to dispute the notice or pay the rent owed in full, within the 5 days granted under Section 46(4) of the Act. As a result, 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 day of the notice. Therefore, the landlord is entitled to an Order of Possession.

In relation to the monetary claim by the landlord for the \$15.00 NSF fee, the Act only allows an Arbitrator to order non-payment of rent only in Direct Request Proceedings. As a result, I dismiss this portion of the landlord's monetary claim and award the landlord the monetary claim for unpaid rent in the amount of \$1,400.00.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective **2 days after service on the tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I further grant a Monetary Order in the amount of **\$1,400.00** in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act*. This order must be served on the tenants and may then 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: November 21, 2013

Residential Tenancy Branch

