



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 landlords for an Order of Possession and a Monetary Order for unpaid rent.

The landlords submitted a signed Proof of Service of the Notice of Direct Request which declares that on December 9, 2013 the landlords served each tenant personally with the Notice of Direct Request. Based on the written submissions of the landlords, 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

Are the landlords entitled to an order of possession for unpaid rent?
Have the landlords established a monetary claim against the tenants for unpaid rent?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by one of the landlords and both tenants on August 31, 2009 for a tenancy commencing on September 1, 2009 for the monthly rent of \$1,450.00 payable on the first day of each month.
- A copy of another residential tenancy agreement which was signed by both landlords and one of the tenants on June 22, 2012 for a tenancy commencing on

May 1, 2012 for the monthly rent amount of \$1,500.00 payable by the tenants in the form of bi monthly payments of \$750.00 on the 1st and 15th day of each month.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on November 4, 2013 with an effective vacancy date of November 14, 2013 due to \$3,676.00 in unpaid rent due on November 1, 2013 (both pages of the approved form were provided);
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which states that the landlords served the notice on November 4, 2013, by posting it to the door of the rental unit with a witness; and
- The Landlords' Application for Dispute Resolution which was made on December 5, 2013 claiming \$3,676.00 of outstanding rent. The details section of the application states that the rent balance carried forward is \$2,136.00 and the balance for November, 2013 is \$1,540.00. The details section also states that the tenant did pay some rent irregularly up to October 2, 2013.
- A copy of a Notice of Rent Increase dated August 20, 2013 which shows that the monthly rent amount payable by the tenant will be increased from \$1,500.00 to \$1,557.00 effective December 1, 2013.

Analysis

I have reviewed the documentary evidence and accept that the tenants were served with the notice to end tenancy by posting it to the door with a witness. The *Act* states that documents are deemed to have been served 3 days after such posting. Therefore, I find that the tenant was deemed to be served on November 7, 2013, and the effective date of vacancy is automatically changed to November 17, 2013 pursuant to Section 53 of the *Act*.

I accept the evidence before me that the tenants failed to dispute the notice or pay the rent owed within the 5 days provided under Section 46(4) of the *Act*. Therefore, 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. Therefore, the landlord is entitled to an Order of Possession for unpaid rent.

However, in relation to the monetary claim for \$3,676.00, there is insufficient details/evidence submitted with the application to explain how this amount was calculated.

The details section of the application states that the tenants had made irregular payments up until October 2, 2013; however there is no detail with regards to when these payments were made, the amounts of these payments and the balance outstanding for the months prior to October, 2013. There is no explanation or breakdown in the amount claimed by the landlords for \$2,136.00 before November, 2013.

In addition the details section of the application states that the amount payable by the tenants for the month of November is \$1,540.00. However, the written tenancy agreement states that the monthly rent amount is \$1,500.00; as a result, there is insufficient evidence to account for the landlords' claim for the remaining \$40.00 and what this amount relates to.

As a result, I am unable to understand how the amount claimed by the landlords was determined and therefore, I am unable to grant a Monetary Order with respect to the claim for unpaid rent.

Conclusion

For the reasons set out above, I find the landlords are entitled to an Order of Possession effective 2 days after service on the tenants. This order must be served on the tenants and may be filed and enforced in the Supreme Court as an order of that court.

I dismiss the landlords' claim for a Monetary Order but provide the landlords with leave to re-apply.

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: December 10, 2013

Residential Tenancy Branch

