



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 of unpaid rent. It is unclear in the application whether the landlord has applied for unpaid utilities.

The landlord submitted a signed proof of service of the notice of direct request proceeding which declares that on December 2, 2013, the landlord served the tenant with the notice of direct request proceeding via personal service, which was signed by the tenant, AS.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the direct request proceeding documents as of December 2, 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 under the *Act*, and if so, in what amount?

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 a residential tenancy agreement which was signed by the parties on January 11, 2013, indicating a monthly rent of \$1,095.00 which was due on the first day of the month; and

- A copy of a 10 day notice to end tenancy for unpaid rent which was dated on November 21, 2013, served on November 22, 2013, with a stated effective vacancy date of December 2, 2013, for \$4,480.00 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 which the tenant signed for at the rental unit on November 22, 2013 at 3:00 p.m.

The notice states that the tenant 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 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 tenant have been served with notice to end tenancy as declared by the landlord.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46(4) of the *Act* and did not dispute the notice. 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 the effective date of the notice, December 2, 2013. Therefore, I find that the landlord is entitled to an order of possession for unpaid rent.

Regarding the landlord's monetary claim, however, I find the landlord has provided insufficient details of the amount of rent being claimed and whether or not that amount includes utilities. Furthermore, I find the landlord has provided no evidence that the landlord served the tenant with a written demand for payment of utilities as required by section 46(6) of the *Act*. As a result, I dismiss the landlord's monetary claim **with leave to reapply**.

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.

If the landlord intends on claiming for unpaid utilities, the landlord must submit an application through the normal dispute resolution process which includes a **participatory hearing**, as such an application is not suitable for the direct request process.

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: December 5, 2013

Residential Tenancy Branch

