



Dispute Resolution Services

Page: 1

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* (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 December 19, 2013 the landlord served the tenant personally with the Notice of Direct Request. Based on the written submissions of the landlord, I find that the tenant has 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 tenant for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a tenancy agreement signed by the landlord and the tenant on August 31, 2013 for a tenancy commencing on October 1, 2013 for the monthly rent of \$825.00 payable on or before the first day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on December 3, 2013 with an effective vacancy date of December 1, 2013 due to \$1,650.00 in unpaid rent due on December 1, 2013 (both pages of the 2 page approved form were provided);
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities stating that the landlord served the notice to the tenant on December 4, 2013 personally with a witness; and
- The Landlord's Application for Dispute Resolution made on December 19, 2013 claiming only \$1,237.50 outstanding rent for December and November, 2013.

Analysis

I have reviewed all the documentary evidence and accept that the landlord personally served the tenant with the notice to end tenancy with a witness on December 4, 2013. The landlord had indicated on the notice to end tenancy that the tenant was required to

move out on December 1, 2013 which is an incorrect date. Section 53 of the Act states that if a landlord gives the tenant a notice to end tenancy effective on a day that does not comply with the Act, the notice is deemed to have changed as applicable. Therefore, I find that the effective date of vacancy is automatically changed to December 14, 2013 pursuant to the Act.

I accept the evidence before me that the tenant has 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 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. I therefore find that the landlord is entitled to an Order of Possession.

In relation to the Monetary Order, it appears as though the landlord has deducting the security deposit amount from the amount owed by the tenant in rent arrears. The Direct Request proceeding does not allow an Arbitrator to authorise the landlord to retain a security deposit it as this can only be dealt with in a participatory proceeding. As a result, I am only able to award the landlord \$1,237.50 which is the amount claimed for on the landlord's application. However, I give the landlord leave to re-apply for any outstanding rent and caution both the landlord and tenant that the rights and obligations with regards to the return of a security deposit at the end of the tenancy are still in effect.

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 tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I also grant a Monetary Order in the amount of **\$1,237.50** in favour of the landlord pursuant to Section 67 of the Act. This order must be served on the tenant 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: January 07, 2014

Residential Tenancy Branch