



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 a landlord’s application for an Order of Possession and a Monetary Order for unpaid rent.

The landlord submitted a signed Proof of Service declaring that the Notice of Direct Request was served to one of the tenants by registered mail, as evidenced by the Canada Post tracking number, and it was served to the other tenant personally within the time limits required by the Act. Based on this, I find that the tenants were served with the Notice of Direct Request Proceeding.

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 tenancy agreement signed by the owner of the property and the tenants on August 19, 2013 for a tenancy commencing September 1, 2013. The tenancy agreement states that the landlord named in the application is an agent acting on behalf of the owner/landlord on the tenancy agreement and indicates that the agent exercises and performs duties under the tenancy agreement. The agreement states that the monthly rent of \$1,600.00 is payable by the tenant in advance 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 January 2, 2014 with an effective vacancy date of January 12, 2014 due to \$1,600.00 in unpaid rent due on January 1, 2014 (both pages 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 landlord served the notice to the tenants on January 2, 2014, by posting it to the tenants' door with a witness; and
- The Landlord's Application for Dispute Resolution made on January 13, 2014 claiming outstanding rent of \$1,600.00 for the month of January, 2014.

Analysis

The Act defines a landlord as a person or the owner's agent, who exercises powers or performs duties under the Act or tenancy agreement. Therefore, I find that the agent named in the tenancy agreement is the landlord with respects to this application for dispute resolution.

I have reviewed all the documentary evidence and I accept that the tenants were served by the landlord with the notice to end tenancy by posting it to the tenants' door with a witness. The Act states that documents served this way are deemed to have been received 3 days after such posting. Therefore, I find that the tenants were deemed to be served the notice to end tenancy on January 5, 2014 and the effective date is automatically corrected to January 15, 2014 pursuant to section 53 of the Act.

I accept the evidence before me that the tenants have failed to dispute the notice or pay the full 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. I therefore find that the landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor 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 **\$1,600.00** in favor of the landlord pursuant to Section 67 of the Act. 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 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 20, 2014

