



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BON TERRA HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR

Introduction

The landlord applied for an Order of Possession and a Monetary Order for unpaid rent under the Direct Request Procedure, pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act").

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding for each tenant to declare that on December 17, 2013 the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit. The landlord provided registered mail receipts, including tracking numbers, as proof of service. Section 90 of the Act deems a person to have received documents five days after mailing.

Based on the written submissions of the landlord, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and monetary compensation 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 parties on March 1, 2013, indicating a monthly rent of \$850.00 due on the 1st day of every month for a fixed term ending February 1, 2014;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 4, 2013 with a stated effective vacancy date of October 16, 2013, for \$2,570.00 in unpaid rent as of October 1, 2013; and,
- A copy of a Proof of Service of the 10 Day Notice indicating the landlord posted the 10 Day Notice on the tenants' door on October 4, 2013 in the presence of a witness.

The 10 Day Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days from the date of service.

In the details of dispute the landlord states that the tenants failed to pay the outstanding rent indicated on the 10 Day Notice. The landlord indicates that the amount appearing on the 10 Day Notice is reflected in a ledger; however, the landlord did not provide a copy of the ledger for this proceeding.

Analysis

I have reviewed all documentary evidence and accept that the tenants were served with the 10 Day Notice to End Tenancy as declared by the landlord. As the 10 Day Notice was posted on the door it is deemed to be received by the tenants three days later, pursuant to section 90 of the Act. Accordingly, the effective date of the Notice automatically changes to read October 17, 2013 under section 53 of the Act.

I accept the evidence before me that the tenants failed to pay the rent owed in full or dispute the Notice within 5 days of receiving the Notice as permitted under section 46(4) of the Act. Accordingly, 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, I find that the tenancy ended October 17, 2013 and the landlord is entitled to an Order of Possession effective two (2) days after service upon the tenants.

In the absence of a copy of the ledger referred to in the details of dispute, or any other details or calculations, I find the landlord has not sufficiently established an entitlement to the monetary compensation claimed with this Application. I dismiss the landlord's monetary claim with leave to reapply.

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenants. The landlords' monetary claim is dismissed with leave.

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 03, 2014

Residential Tenancy Branch

