



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR Limited Partnership
and [tenant name suppressed to protect privacy]

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 based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declared that on December 20, 2013, at 10:48 a.m., the landlord posted the Notices of Request Proceedings on the tenants’ door.

Based on the written submissions of the landlord and in accordance with sections 88, 89(2)(d) and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents seeking an end to this tenancy and an Order of Possession on December 23, 2013, the third day after the posting of these documents on the tenants’ door. I am able to consider this portion of the landlord’s application.

Section 89(1) of the *Act* establishes the following Special Rules whereby a party seeking a monetary award must serve an application for dispute resolution.

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;...*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...*

As the landlord has not served the Notices of Direct Request seeking a monetary award to the tenants in a way required by section 89(1) of the *Act*, I am unable to consider the landlord's application for a monetary award against the tenants. To grant them the monetary award the landlords are seeking, the landlords would need to serve both respondents with notice as required under the *Act*. As required proof of service has not occurred and a participatory hearing could not correct the service deficiency with respect to the existing application, I dismiss the landlord's application for a monetary award with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding served to the tenants in accordance with section 89(2)(d) of the *Act*,
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on June 27, 2013. According to the tenancy agreement, monthly rent was set at \$1,075.00, payable in advance on the 1st day of the month; and
- A copy of a 10 Day Notice posted on the tenant's door on December 3, 2013, with a stated effective vacancy date of December 13, 2013, for \$1,125.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord stated that the 10 Day Notice was posted on the tenants' door at 4:37 p.m. on December 3, 2013. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed to have been served with this 10 Day Notice on December 6, 2013, the third day after its posting on their door.

The Notice states that the tenants had five days from the date of service to pay the amount identified as owing in full 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.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been deemed served with notice to end tenancy as declared by the landlord. The landlord's

written evidence stated that the Proof of Service of the Notice of Direct Request document was posted on the tenants' door on December 20, 2013.

I accept the evidence before me that the tenants have failed to pay the rent owing at that time in accordance with their Residential Tenancy Agreement, \$1,075.00, in full within the 5 days granted under section 46 (4) of the *Act*. I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the Notice. Therefore, I find that the landlords are entitled to an Order of Possession.

Conclusion

I find that the landlords are entitled to an Order of Possession effective **two days after service** on the tenants and this Order may be filed in the Supreme Court and enforced as an Order of that Court.

I dismiss the landlord's application for a monetary award with leave to reapply.

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 15, 2014

Residential Tenancy Branch

