



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 723 Field Street Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR, MNR

Introduction

This matter was conducted 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 and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 22, 2014 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service.

Section 90 of the Act determines that a document is deemed to have been served on the 5th day after mailing.

Based on the written submissions of the landlord, I find that the tenant has been served with the Direct Request Proceeding documents effective January 27, 2014.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary Order for unpaid rent?

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 an unidentified date for a tenancy commencing on October 15, 2013, indicating a monthly rent of \$750.00 due in advance by the first day of the month;

- A December 19, 2013 notice to tenants indicating the property had been sold; the name of the new landlord and contact information; and
- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities which was issued on January 7, 2014 with a stated effective vacancy date of January 20, 2014, for \$750.00 in unpaid rent due on January 1, 2014.

The Notice was in the approved form and included all content required by section 52 of the Act; the landlord name was missing from the Notice.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 day Notice to end tenancy for unpaid rent or utilities by personal delivery to the tenant on January 7, 2014 at 11 a.m. The landlord submitted a proof of service document indicating the landlord M.F. served the tenant at the rental unit with another employee, R.P. present as a witness. The witness signed a separate statement, indicated she was present when service of the Notice ending tenancy was given to the tenant.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$750.00 within 5 days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within 5 days.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord.

The Notice is deemed to have been received by the tenant on January 7, 2014, the day of personal delivery.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice.

In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant is conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice; January 20, 2014.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid January 2014 rent.

Pursuant to section 55 of the Act, the landlord is entitled to an Order of Possession effective **two days after service** on the tenant. The Order may be filed in the Supreme Court and enforced as an Order of that Court.

Pursuant to section 67 of the Act, the landlord is entitled to monetary compensation in the amount of \$750.00 for January 2014 rent owed and I grant an Order in that amount. 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.

Conclusion

The landlord is entitled to an Order of possession and a monetary Order for unpaid January 2014 rent.

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 29, 2014

Residential Tenancy Branch

