



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 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 20, 2014 the landlord personally served each tenant with the Notice of Direct Request Proceeding, at the rental unit address.

Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

Based on the written submissions of the landlord, I find that each tenant has been served with the Direct Request Proceeding documents effective January 10, 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 each tenant;
- A copy of a residential tenancy agreement which was signed by the parties on December 21, 2013, indicating a monthly rent of \$800.00 due on the 1st day of the month; and

- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities which was issued on January 2, 2014 with a stated effective vacancy date of January 12, 2014, for \$300.00 in unpaid January 2014 rent.

The tenancy agreement indicated the tenants were to pay a \$400.00 security and pet deposit, each. The agreement had a notation that indicated \$200.00 of the pet deposit and \$50.00 of the security deposit was paid on December 1, 2013.

Documentary evidence filed by the landlord indicates that the tenants failed to pay rent owed and were served the 10 day Notice to end tenancy for unpaid rent or utilities by personal delivery to J.T. on January 2, 2014, at the rental unit address. The landlord submitted a proof of service document, signed by his spouse, who declares she was a witness to the service that occurred at 4 p.m.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$300.00 within 5 days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within 5 days.

The application indicated that the tenants have paid \$2,100.00 since moving into the unit; which covered December 2013 rent, the deposits and \$500.00 of January 2014 rent. The tenants have not paid the outstanding balance of \$300.00 owed for January 2014 rent.

Analysis

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

The Notice is deemed to have been received by the tenants on the day of personal delivery; January 2, 2014.

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 tenants exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenants are conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice; January 12, 2014.

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

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of \$300.00 for January 2014 rent owed and I grant an Order in that amount. 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.

Conclusion

The landlord is entitled to an Order of possession and a monetary Order for unpaid 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: February 04, 2014

Residential Tenancy Branch

