



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 an application made by the landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Direct Request process is a mechanism that allows the landlord to apply for an expedited decision without a participatory hearing. As a result, the landlord must follow and submit documentation **exactly** as the Act prescribes and there can be no omissions or deficiencies within the written submissions that are left open to interpretation or inference.

The landlord submitted a signed Proof of Service of the Notice of Direct Request which declares that the landlord personally served one of the tenants named on the application (referred to as “HW”) with the Notice of Direct Request. However, the landlord did not fully complete the Proof of Service document **or** provide sufficient evidence to show the **date** the tenant was served the Notice of Direct Request. Therefore, I am unable to determine whether HW was served in accordance with the requirements of Section 59(3) of the Act.

The landlord submitted another signed Proof of Service of the Notice of Direct Request which declares that the landlord served the other tenant named on the application (referred to as “BSR”) with the Notice of Direct Request by registered mail. However, the landlord again did not fully complete the Proof of Service document to show the date and time this tenant was served the Notice of Direct Request. However, the landlord did provide the Canada Post tracking receipt which indicates that the landlord mailed the Notice of Direct Request to BSR on February 13, 2014. The Proof of Service document indicates that the Notice of Direct Request was sent by registered mail to the address of the rental suite. As a result, I accept the landlord served the Notice of Direct Request to BSR in accordance with the Act.

As the landlord has only proved service of the Notice of Direct Request to BSR in accordance with the Act, any subsequent orders issued to the landlord will only be in the name of BSR.

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 which was signed by the landlord and the tenants on November 27, 2013 for a tenancy commencing on December 1, 2013 for the monthly rent of \$750.00 payable on or before the first calendar day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on February 4, 2014 with an effective vacancy date of February 13, 2014 due to \$750.00 in unpaid rent due on February 1, 2014 (both pages of the two page approved form 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 February 4, 2014, by posting it to the tenants' door with a witness; and,
- The Landlord's Application for Dispute Resolution which was made on February 13, 2014 claiming outstanding rent of \$750.00 for February, 2013.

Analysis

I have reviewed all the documentary evidence and accept that the tenants were served with the notice to end tenancy which complies with the Act, by posting it to the door in the presence of a witness. The Act states that documents are deemed to have been served 3 days after posting them to the door. Therefore, I find that the tenants were deemed to be served on February 7, 2014, and the effective date of vacancy on the notice is automatically changed to February 17, 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 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 favour of the landlord effective **2 days after service on the tenant BSR**. 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 **\$750.00** in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act*. This order must be served on BSR and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the tenant fails to make payment.

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 19, 2014

Residential Tenancy Branch

