



Dispute Resolution Services

Page: 1

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 February 14, 2014 the landlord's agent served each tenant with the Notice of Direct Request Proceeding. Personal delivery occurred at 6 p.m., at the rental unit.

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

Therefore, based on the written submissions of the landlord, I find that each tenant has been served with the Direct Request Proceeding documents.

Preliminary Matters

The tenancy agreement supplied as evidence indicates that the female respondent named on the application for dispute resolution has a different last name than that indicated on the tenancy agreement. Therefore, in the absence of evidence of a legal name change or other evidence proving the female who signed the tenancy agreement is the same person named as a respondent, the application has been amended to remove the female respondent.

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 October 21, 2013, indicating a monthly rent of \$850.00 due on the 30th 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 11, 2014, for \$1,230.00 in unpaid rent.

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 male tenant on January 2, 2014 at 5 p.m. The landlord submitted a proof of service documents, also signed by a friend, J.T., who was present to witness service at the rental unit address.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,230.00 rent owed (\$380.00 for December 2013 and \$850.00 for January 2014) 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 the day of personal delivery; January 2, 2014.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to January 12, 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 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 12, 2014.

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 tenant. 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 \$1,230.00 for December 2013 and 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 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 20, 2014

Residential Tenancy Branch

