



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 a landlord’s application for an Order of Possession and a Monetary Order for unpaid rent

The landlord submitted a signed Proof of Service of the Notice of Direct Request which declares that the landlord served the tenant with the Notice of Direct Request by posting it to the tenant’s door. With regards to the landlord’s application for a **Monetary Order** for unpaid rent; section 89(1) of the Act does not allow a Notice of Direct Request Proceeding to be served to a tenant by posting it to the door. As the landlord has failed to serve the Notice of Direct Request to the tenant in accordance with section 89(1) of the Act, I dismiss the **monetary portion only** of the landlord’s application with leave to reapply.

However, in relation to the landlord’s application for an **Order of Possession**, section 89(2) (d) of the Act does **allow** a landlord to serve the Notice of Direct Request by posting it to the tenant’s door. Section 90(b) of the Act provides that a document served in this manner is deemed to have been received three days later. Based on this, I find that the tenant has been served with the Notice of Direct Request **only** in relation to the landlord’s application requesting an Order of Possession. My findings in relation to this portion of the landlord’s application are detailed below.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant and commenced on May 15, 2013 for a monthly rent of \$900.00 payable on the 15th day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on February 3, 2014 with an effective vacancy date of February 15, 2014 due to \$1,800.00 in unpaid rent due on January 15, 2014 (both pages of the 2 page form were provided as evidence);
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities stating the landlord served the notice personally to the tenant on February 3, 2014 with a witness; and
- The Landlord's Application for Dispute Resolution which was made on February 3, 2014 claiming \$1,800.00 of outstanding rent for two months.

Analysis

I have reviewed the documentary evidence and accept that the tenant was served with the notice to end tenancy, which complies with the Act, as declared by the landlord in the presence of a witness. I accept the evidence before me that the tenant has 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 tenant is 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.

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**. This order may then be filed and enforced in the Supreme Court as an order of that court. The landlord's application for a Monetary Order for unpaid rent is dismissed with leave to re-apply.

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 21, 2014

Residential Tenancy Branch

