



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Associated Property Management (2001) Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded 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 for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 17, 2014, the landlord served the tenants with the Notice of Direct Request Proceeding via registered mail.

Section 90 of the Act determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlord, I find that the tenants have been duly served with the Direct Request Proceeding documents.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a 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 Request Proceeding;
- A copy of a residential tenancy agreement which was signed by the parties on March 3, 2014, indicating that the tenancy started on March 1, 2014 and that the tenants are obligated to pay \$1,400.00 in rent in advance on the first day of the month;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") which the landlord served on the tenants on February 5, 2014 for \$2,000.00 in unpaid rent due in the month of February; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice on the tenants by sending it via registered mail.

Section 90 of the Act provides that because the Notice was served by registered mail, the tenants are deemed to have received the Notice 5 days later on February 10, 2014.

The Notice restates section 46(4) of the Act which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution. The tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

Analysis

The landlord provided a tenancy agreement which stated that the tenancy began on March 1, 2014 and seeks to rely on a notice to end tenancy which predates the date the tenancy began. Because the landlord entered into a tenancy agreement with the tenants after the date the Notice was served, I find that the landlord reinstated the tenancy. I therefore dismiss the application for an order of possession.

As for the monetary claim, the landlord did not submit a tenancy agreement showing that the tenants were obligated to pay rent in the month of February. I accept that the parties may have had an enforceable oral tenancy agreement between them, but the direct request process requires a written tenancy agreement. I dismiss the monetary claim with leave to reapply. If a written tenancy agreement was not in place prior to the time rent was due, the landlord should apply for a participatory hearing to allow an Arbitrator to hear oral evidence from both parties about any oral tenancy agreement.

Conclusion

The application for an order of possession is dismissed. The application for a monetary order is dismissed with leave to reapply.

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: March 25, 2014

Residential Tenancy Branch

