



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding O J Realty & Property Management Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 25, 2014, the landlord served the tenant 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 five days after service.

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

Issues to be Decided

Is the landlord entitled to an order of possession?

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 December 17, 2013, indicating that the tenant is obligated to pay \$745.00 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 tenant on February 11, 2014 which states there is \$807.00 in unpaid rent due in the month of February 2014; and

- A copy of the Proof of Service of the Notice showing that the landlord served the Notice on the tenant by posting the Notice on the tenant's door on February 11, 2014.

Section 90 of the Act provides that because the Notice was served by posting the Notice on the tenant's door, the tenant is deemed to have received the Notice three days later on February 14, 2014.

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

Analysis

I find that the tenant received the Notice on February 14, 2014. However, I find that the Notice was not valid because it specified a larger amount of unpaid rent than was due on February 1, 2014.

According to the written tenancy agreement, the parties agreed the tenant would pay a pet security deposit in six monthly installments of \$62.00 per month. The landlord apparently added that amount to the unpaid rent and specified an amount of \$807.00 on the Notice, rather than the actual unpaid rent of \$745.00. The Notice therefore indicates that the tenant must pay a larger amount within five days in order to avoid eviction than the amount she was actually obligated to pay in order to avoid eviction.

For that reason, I dismiss the landlord's application for an order of possession.

Conclusion

I dismiss the landlord's application for an order of possession.

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 3, 2014

Residential Tenancy Branch

