



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BELMONT PROPERTIES
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 for unpaid rent and a monetary order of unpaid rent.

The landlord submitted a signed proof of service of the notice of direct request proceeding which declares that on February 28, 2014, the landlord served the tenant with the notice of direct request proceeding via registered mail.

Section 90 of the *Act* indicates that documents served by registered mail are deemed served five days after they are mailed.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the direct request proceeding documents as of March 5, 2014.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

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 which included a copy of the registered mail receipt;

- A copy of a residential tenancy agreement which was signed by the parties on September 9, 2009, indicating a monthly rent of \$700.00 which was due on the first day of the month; and
- A copy of a 10 day notice to end tenancy for unpaid rent which was dated on February 4, 2014, and served on February 4, 2014, with a stated effective vacancy date of February 14, 2014, for \$1,900.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the rent owed and was served the 10 day notice to end tenancy for unpaid rent by personal service which the tenant signed for at the rental unit on February 4, 2014 at 7:30 p.m.

The notice states that the tenant had five days to pay the rent in full or apply for dispute resolution or the tenancy would end 10 days from the service date. The tenant did not apply to dispute the notice to end tenancy within five days from the date of service.

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.

I accept the evidence before me that the tenant has failed to pay rent owed in full within the 5 days granted under section 46(4) of the *Act* and did not dispute the notice. Based on the foregoing, 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, February 14, 2014. Therefore, I find that the landlord is entitled to an order of possession for unpaid rent.

Regarding the landlord's monetary claim; however, I find the landlord has provided insufficient details of the amount of rent being claimed as the landlord has failed to provide evidence of rent increases and it appears from the amount being claimed for January and February 2014 that a rent increase may have taken place during the tenancy. Given the above and without evidence to support that a rent increase was served upon the tenant in accordance with the *Act*, I am unable to determine the exact amount of rent owing, however I am satisfied that an amount of rent remains unpaid by the tenant which resulted in the order of possession being granted. I **dismiss** the landlord's monetary claim **with leave to reapply**.

If the landlord intends to submit an application for unpaid rent the landlord should submit an application through the normal dispute resolution process which includes a

participatory hearing, as such an application without supporting evidence is not suitable for the direct request process.

Conclusion

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that court.

If the landlord intends to submit an application for unpaid rent the landlord should submit an application through the normal dispute resolution process which includes a participatory hearing, as such an application without supporting evidence is not suitable for the direct request process.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 7, 2014

Residential Tenancy Branch

