



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLLIERS MACAULAY NICOLLS, INC
and [Tenants name suppressed to protect privacy]

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* (the "Act") in response to an application made 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 which declares that on April 11, 2014 the Landlord served each Tenant with the Notice of Direct Request by registered mail pursuant to section 89(1) (c) of the Act. The Landlord provided a copy of the Canada Post tracking numbers and mailing receipt as evidence for this method of service. Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. As a result, I find that the Tenants were deemed served with Notice of Direct Request Proceeding on April 16, 2014.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent?
Has the Landlord established a monetary claim against the Tenants for unpaid rent?

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a tenancy agreement signed by one of the Tenants and Landlord on January 5, 2007 for a tenancy commencing on January 15, 2007. According to the agreement, the monthly rent at the start of the tenancy was \$1,550.00 payable by the Tenants in advance on or before the first day of each month;
- A 'Resident Ledger' document from December, 2009 onwards which indicates rental payments made by the Tenant. However, the amounts on the document differ to the amount payable on the tenancy agreement.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on April 2, 2014 with an effective vacancy date of April 12, 2014 due to \$2,542.00 in unpaid rent due on April 1, 2014 (both pages of the 2 page approved form were provided);
- A copy of the Proof of Service of the Notice stating the Landlord served the Notice to the Tenants on April 2, 2014 by attaching it to the Tenants' door with a witness; and
- The Landlord's Application for Dispute Resolution which was made on April 11, 2014 claiming \$771.00 in outstanding rent for March, 2014 and \$1,771.00 for unpaid rent for April 1, 2014, for a total monetary claim of \$2,542.00.

Analysis

I have reviewed the documentary evidence and accept that the Landlord served the Tenants with a Notice that complied with the Act, by attaching it to the Tenants' door with a witness on April 2, 2014. The Act states that documents served this way are deemed to have been received three days after being attached to the door. Therefore, I find that the Tenants was deemed to be served the Notice on April 5, 2014 and the effective date of vacancy on the Notice is automatically corrected to April 15, 2014 pursuant to section 53 of the Act.

I accept the evidence before me that the Tenants have failed to dispute the Notice or pay full rent within the 5 days provided under Section 46(4) of the Act. Therefore, I find that the Tenants are conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and the Landlord is entitled to an Order of Possession.

In relation to the Monetary Order, I find that the Landlord submitted evidence in the form of a tenancy agreement showing the rent at the start of the tenancy was established at \$1,550.00. The Landlord submitted evidence in the form of a 'Resident Ledger' which indicates that the Tenant was paying a higher amount than the amount recorded on the tenancy agreement. In the absence of sufficient evidence to explain this discrepancy, such as a Notice of Rent Increase, I am unable to issue the Landlord a Monetary Order.

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 Tenants**. This order may then be

enforced in the Supreme Court as an order of that court if the Tenants fail to vacate the rental unit.

For the above reasons, I dismiss the Landlord's claim for a Monetary Order but provide the Landlord leave to re-apply for the outstanding rent through the conventional participatory hearing process to explain the discrepancy above.

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: April 17, 2014

Residential Tenancy Branch

