



Dispute Resolution Services

Page: 1

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* (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 each Tenant with the Notice of Direct Request by registered mail on April 1, 2014. The Landlord provided the Canada Post tracking numbers which indicate the same postal code as the Tenant's address. Section 90(a) of the Act states that a document served by mail is deemed to have been received 5 days after it is mailed. Based on this, I find the Tenants were deemed served with the Notice of Direct Request Proceeding on April 6, 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 and unpaid utilities?

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement signed by the Landlord on July 10, 2013 and one of the Tenants on August 1, 2013 for a tenancy commencing on September 1, 2013. Rent of \$1,800.00 is payable by the Tenants on the first day of each month;

- A copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on March 19, 2014 with an effective vacancy date of March 29, 2014 due to \$2,200.00 in unpaid rent due on March 1, 2014. The Notice also shows that the Tenants have failed to pay utilities in the amount of \$693.53 following a written demand letter on March 19, 2014.
- A copy of the Proof of Service of the Notice which shows the Landlord served the Notice to the Tenants on March 19, 2014, by registered mail. The Landlord provided the Canada Post tracking number as evidence for this method of service; and
- The Landlord's Application for Dispute Resolution made on April 1, 2014 claiming outstanding rent of \$2,893.53. The Landlord submitted additional documents which show that this amount comprises of outstanding unpaid rent for the months of January, February and March, 2014 in addition to the unpaid utilities.

Analysis

I have reviewed the documentary evidence and I accept that the Tenants were served by the Landlord with the Notice that complied with the Act, by registered mail on March 19, 2014 based on the Canada Post tracking numbers provided as evidence for this method of service. In accordance with Section 90(a) of the Act, I find that the Tenants are deemed to have received the Notice on March 24, 2014 and the effective date of vacancy on the Notice is automatically changed to April 3, 2014 pursuant to section 53 of the Act.

I accept the evidence before me that the Tenants failed to dispute the Notice or pay the rent owed on the Notice 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 corrected date of the Notice. As a result, the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent in the amount of \$2,200.00.

In relation to the Landlord's monetary claim for unpaid utilities, Section 46(6) of the Act states that if a Tenant is required to pay utilities and the utility charges are unpaid more than 30 days after the Tenant is given a written demand for payment of them, the Landlord may treat the unpaid utility charges as unpaid rent and may give Notice under this section.

The Direct Request Proceedings may only be used to claim for unpaid rent. In this case the Landlord declares on the Notice that the Tenant was given the written demand letter for the outstanding utilities on March 19, 2014 as required by the Act. However, the Act requires 30 days to pass before the unpaid utilities may be treated as unpaid rent. Therefore, as this period has not passed and the Landlord provided insufficient evidence of the demand letter and evidence supporting the outstanding utilities e.g. utility bills, I am unable to award the Landlord the unpaid utilities claimed. However, the Landlord is given leave to re-apply for the unpaid utilities.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the Landlord effective **2 days after service on the Tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I further grant a Monetary Order in the amount of **\$2,200.00** for unpaid rent in favor of the Landlord pursuant to Section 67 of the Act. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The Landlord's application for unpaid utilities 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: April 07, 2014



Residential Tenancy Branch

RTB-136