



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

Introduction

The landlord applied for an Order of Possession and a Monetary Order for unpaid rent under the Direct Request Procedure, pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act").

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 10, 2014 the landlord served the tenant with the Notice of Direct Request Proceeding via personal delivery at the rental unit.

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

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and monetary compensation for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on November 25, 2013, indicating a monthly rent of \$1,200.00 due on the 1st day of every month for a one-year fixed term as well as terms indicating a late fee of \$50.00 would be charged and automatic forfeiture of the security deposit if rent is not paid;
- A copy of a utility bill issued to the tenant by the City on February 18, 2014 for \$705.69;
- A copy of a letter from the City informing the landlord that utilities for the tenant at the rental unit were disconnected;

- A copy of a notes signed by the tenant authorizing the landlord to keep the security deposit and agreeing to pay the landlord or vacate the property as follows:
 - \$600.00 by March 14, 2014
 - \$300.00 by March 25, 2014
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 2, 2014 with a stated effective vacancy date of April 14, 2014, for \$725.00 in unpaid rent as of April 1, 2014 and \$705.69 in unpaid utilities that were demanded in writing on March 24, 2014;
- A copy of a Proof of Service of the 10 Day Notice indicating the landlord personally served the 10 Day Notice to the tenant on April 2, 2014 as evidenced by the tenant's signature acknowledging receipt of the Notice;

The 10 Day Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

In the details of dispute the landlord indicated one of the co-tenants has already moved out and that the named tenant owes \$725.00 in rent for April 2014. The landlord also indicated that he is not claiming for unpaid utilities.

Analysis

I have reviewed all documentary evidence and accept that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid rent on April 2, 2014 as declared by the landlord.

I accept the evidence before me that the tenant failed to either: pay the rent owed in full; or, dispute the Notice within 5 days of receiving the Notice as permitted under section 46(4) of the *Act*. Accordingly, 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. Therefore, I find that the tenancy ended April 14, 2014 and the landlord is entitled to an Order of Possession effective two (2) days after service upon the tenant.

In the absence of a ledger or other statement of account, I find the documentary evidence does not clearly demonstrate the amount of unpaid rent claimed by the landlord especially considering the non-compliant terms in the tenancy agreement concerning late fees and automatic forfeiture of the security deposit and the varying amounts included in the notes signed by the tenant in March 2014. Therefore, I dismiss the landlord's monetary claim with leave to reapply for a participatory hearing.

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord's monetary claim is dismissed with leave to reapply for a participatory hearing.

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 22, 2014

Residential Tenancy Branch

