



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 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 and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 17, 2014 at 6 p.m. the landlord personally served the tenant with the Notice of Direct Request Proceeding at the rental unit address.

The proof of service document supplied as evidence indicated that the hearing documents were also posted to the tenant's door on April 17, 2014.

The landlord also submitted evidence of service completed via registered mail. The landlord provided a Canada Post receipt and tracking number as evidence of service to the rental unit address, sent on April 17, 2014.

When requesting a monetary Order posting of documents does not comply with section 89 of the Act.

Section 90 of the Act determines personal delivery is deemed completed on the day of delivery.

Section 90 of the Act determines that a document is deemed to have been served on the 5th day after mailing.

Therefore, based on the written submissions of the landlord, I find that the tenant has been served, pursuant to sections 89 and 90 of the Act, with the Direct Request Proceeding documents effective April 22, 2014; the 5th day after mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary Order for unpaid rent?

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;
- A copy of a residential tenancy agreement which was signed by the parties on December 1, 2013, indicating a monthly rent of \$500.00 due on the 1st day of the month

The tenancy agreement supplied as evidence indicated the tenancy was for a fixed term ending on January 31, 2014. The landlord and tenant each initialed section 2(b) (iii) of the agreement, indicating that if the tenancy ends the tenant must vacate the rental unit. The corresponding box was not marked.

The landlord supplied:

- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities which was issued on April 9 2014 with a stated effective vacancy date of April 19, 2014, for \$500.00 in unpaid rent due on April 1, 2014.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 day Notice to end tenancy for unpaid rent or utilities by personal delivery on April 9, 2014. The landlord submitted a proof of service document signed by the tenant, acknowledging receipt of the Notice at 12 noon. The proof of service was also signed by the landlord and his son, a manager, confirming service occurred.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$500.00 within 5 days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant files an Application for Dispute Resolution within 5 days.

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.

Section 90 of the Act stipulates that a document given personally is deemed served on the day of personal delivery. Therefore, I find that the tenant received the Notice to end tenancy on April 9, 2014.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have

received this Notice on April 9, 2014, I find that the earliest effective date of the Notice is April 19, 2014.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on April 19, 2014, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice.

In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant is conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice; April 19, 2014.

As the tenant signed the proof of service acknowledging receipt of the 10 day Notice ending tenancy, I find that the tenancy has continued beyond the end of the fixed term tenancy indicated on the tenancy agreement.

Therefore, I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of possession effective **two days after service** on the tenant. The Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to monetary compensation, pursuant section 65 of the Act, in the amount of \$500.00 April 2014 rent owed and I grant an Order in that amount. This Order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession and a monetary Order for unpaid rent.

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 30, 2014

Residential Tenancy Branch

