



Dispute Resolution Services

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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 the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service to each tenant.

The landlord is required to mail the Notice of Direct Request Proceeding within 3 days of receipt of the hearing package. The proof of service information supplied as evidence did not indicate the date the registered mail was sent to each tenant. However, the proof of service and mail receipts were supplied to the Residential Tenancy Branch, via facsimile, on April 11, 2014. Therefore, I have accepted April 11, 2014 as the date the landlord sent the registered mail to each tenant.

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 each tenant been served, pursuant to sections 89 and 90 of the Act, with the Direct Request Proceeding documents effective April 16, 2014.

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 each tenant;
- A copy of a residential tenancy agreement which was signed by the parties on July 23, 2013, indicating a monthly rent of \$900.00 due on the 29th day of the month;
- A condition inspection report;
- An April 1, 2014 note signed by the tenants indicating they will vacate “at the end of April;” and
- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities which was issued on April 1, 2014 with a stated effective vacancy date of April 12, 2014, for \$1,200 in unpaid rent due April 1, 2014.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and were served the 10 day Notice to end tenancy for unpaid rent or utilities by personal delivery to the female tenant at 8:15 a.m. on April 1, 2014. A proof of service document supplied as evidence was signed by the tenant, confirming receipt of the Notice.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,200.00 within 5 days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants 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.

The application indicated that the tenants failed to pay \$300.00 rent that was due for March and that April rent has not been paid.

Analysis

I have reviewed all documentary evidence and accept that the tenants have 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 1, 2014; the date the female tenant signed confirming receipt of the Notice.

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 tenants are deemed to

have received this Notice on April 1, 2014, I find that the earliest effective date of the Notice is April 10, 2014.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on April 12, 2014; the date on the Notice, 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 tenants exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenants are conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice; April 12, 2014.

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 tenants. 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 \$300.00 for March 2014 rent and \$900.00 for April 2014 rent due on March 29 2014 and I grant an Order in that amount. 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.

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 17, 2014

Residential Tenancy Branch

