



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KINGSGATE GARDENS CORPORATION
and [tenant 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 and 67 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 Direct Request process is a mechanism that allows the Landlord to apply for an expedited decision without a participatory hearing. As a result, the Landlord must follow and submit documentation **exactly** as the *Act* prescribes and there can be no omissions or deficiencies within the written submissions that are left open to interpretation or inference.

The landlord submitted a signed Proof of Service of the Notice of Direct Request which declares that the landlord personally served one of the tenants named on the application with the Notice of Direct Request on April 14, 2014.

The landlord has provided no proof that the other tenant named on the application was served either in person or by any other method prescribed under the *Act*. Therefore, I am unable to determine whether the second tenant was served in accordance with the requirements of Section 89 of the *Act*. As the landlord has only proved service of the Notice of Direct Request to one of the tenants in accordance with the *Act*, any

subsequent Monetary Order issued to the landlord will only be in the name of that tenant.

Issue(s) to be Decided

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

Has the landlord established a monetary claim 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 October 08, 2013 for a tenancy commencing on October 1, 2013 for the monthly rent of \$1,195.00 payable on the first day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on March 14, 2014 with an effective vacancy date of March 24, 2014 due to \$1,590.00 in unpaid rent due on March 1, 2014, (both pages of the two page approved form were provided);
- A copy of the Proof of Service of the Notice which states that the landlord served the Notice to the tenants on March 14, 2014, in person with a witness.

Documentary evidence filed by the landlord indicates that the tenants had failed to pay the full rent owed for the months of February of \$295.00 and for March of \$1,195.00 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent by hand on March 14, 2014.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days.

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. The Notice is deemed to have been received by the tenants on March 14, 2014. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, 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.

Because the tenants are jointly and severally liable for this single tenancy, the landlord is entitled to an **Order of Possession** of the rental suite even though only one of the tenants was served with the Notice of Direct Request in accordance with the *Act*.

However, an application for a **Monetary Order** requires that each tenant named in the application be served Notice of the Direct Request. In this case, the landlord only served one of the tenants. As a result, the landlord is entitled to a Monetary Order against that tenant only. The landlord has applied for \$1,590.00 but has declared that the outstanding rent for February is \$295.00 and the outstanding rent for March is \$1,195.00. This means the total amount of outstanding rent is actually \$1,490.00 not the amount sought on the application. The landlord's monetary claim has been adjusted accordingly.

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 filed and enforced in the Supreme Court as an Order of that court if the tenants fail to vacate the rental suite.

I further grant a Monetary Order in the amount of **\$1,490.00** in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act*. This order must be served on **the tenant named on the Order** and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that court if the tenant fails to make payment.

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 15, 2014

Residential Tenancy Branch

