



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 a Direct Request Proceeding, pursuant to Section 55(4) 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 Landlord submitted a signed Proof of Service of the Notice of Direct Request which declares that on April 24, 2014 the Landlord served the Tenant with the Notice of Direct Request by registered mail pursuant to Section 89(1) (c) of the Act. The Landlord provided a copy of the Canada Post tracking number and receipt as evidence for this method of service. Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. As a result, I find that the Tenant was deemed served with Notice of Direct Request Proceeding on April 29, 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 for unpaid rent **and** unpaid utilities?

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a tenancy agreement with the Landlord signed by the Tenant on January 21, 2013 for a tenancy commencing on February 1, 2013. The monthly rent is \$565.00 which is required to be paid by the Tenant 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 April 6, 2014 with an effective vacancy date of April 16, 2014

due to \$1,284.00 in unpaid rent due on April 6, 2014. The Notice also shows that the Tenant has failed to pay utilities in the amount of \$136.00 following a written demand letter on April 6, 2014.

- A copy of the Proof of Service of the Notice which declares the Notice was served on April 6, 2014 by attaching it to the Tenant's door with a witness; and
- The Landlord's Application for Dispute Resolution which was made on April 24, 2014 claiming \$1,420.00; this comprises of unpaid rent for the months of: February for \$154.00; March for \$565.00 and April for \$565.00. The Landlord also claims \$136.00 for the unpaid utilities.

Analysis

I have reviewed the documentary evidence and accept that the Landlord served the Tenant with a Notice that complied with the Act, by attaching it to the Tenant's door with a witness on April 6, 2014. The Act states that documents served this way are deemed to have been received three days after being attached to the door. Therefore, I find that the Tenant was deemed to be served the Notice on April 9, 2014 and the effective date of vacancy on the Notice is automatically corrected to April 19, 2014 pursuant to section 53 of the Act.

I accept the evidence before me that the Tenant has failed to dispute the Notice or pay the outstanding rent owed on the Notice within the 5 days provided under Section 46(4) of the Act. Therefore, 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 and the Landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$1,284.00.

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 April 6, 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 Tenant**. This order may then be enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

I further grant a Monetary Order in the amount of **\$1,284.00** in favor of the Landlord pursuant to Section 67 of the Act. This order must be served on the Tenant 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.

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: May 02, 2014

Residential Tenancy Branch

