



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 a Landlord's application 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 the Landlord served each Tenant with the Notice of Direct Request by registered mail on June 3, 2014. The Landlord provided the Canada Post tracking receipts as evidence for this method of service.

Section 90(a) of the Act states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service through neglect or failure to pick up mail and this cannot be the basis for a review application. Based on this, I find the Tenants were deemed served with the Notice of Direct Request Proceeding on June 8, 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 against the Tenants for unpaid rent?

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement signed by the Landlord and the Tenants on February 23, 2014 for a tenancy commencing on March 1, 2014. The agreement details that the monthly rent of \$3,000.00 is payable on the 1st day of each month and then on the 15th day of each month thereafter;

- A copy of a two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on May 23, 2014 with an effective vacancy date of June 6, 2014 due to \$3,000.00 in unpaid rent due on May 15, 2014;
- A copy of the Proof of Service of the Notice which shows the Landlord served the Notice to the Tenants on May 23, 2014 by attaching it to the Tenants' door with a witness; and
- The Landlord's Application for Dispute Resolution made on June 3, 2014 claiming outstanding rent of \$3,000.00 for May, 2014. The Landlord explains in the details section that as per the tenancy agreement, the first rent payment was payable by the Tenants on the first day of each month and then after this, rent was payable on the 15th day of each month.

Analysis

I have reviewed the documentary evidence and I accept that the Tenants were served with the Notice, which complied with the Act, by attaching it to the Tenants' door with a witness. 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 Tenants were deemed to be served the Notice on May 26, 2014.

I accept that the tenancy agreement submitted as evidence shows that the rent amount due on the Notice was payable by the Tenants on May 15, 2014.

I accept the evidence before me that the Tenants failed to dispute the Notice or pay the rent owed on the Notice within the five days provided under Section 46(4) of the Act. Therefore, I find that the Tenants are conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on the date of the Notice. As a result, the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the Landlord effective **two days after service on the Tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I further grant a Monetary Order in the amount of **\$3,000.00** in favor of the Landlord pursuant to Section 67 of the Act. 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.

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: June 10, 2014

Residential Tenancy Branch

