



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded 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 landlords for an Order of Possession and a monetary order for unpaid rent.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 20, 2014, the landlords served each of the tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Act determines that documents served in this manner are deemed to have been served five, whether or not the tenants refuse or neglect to accept the documents.

Based on the written submissions of the landlords, I find that both the tenants have been duly served with the Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 46, 55 and 67 of the Act.

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on November 19, 2013, indicating a monthly rent of \$880.00 due on the first day of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on June 9, 2014, with a stated effective vacancy date of June 21, for \$880.00 in unpaid rent.

Documentary evidence filed by the landlords indicates that the tenants have been withholding rent.

Section 26(1) of the Act states that the tenants must pay rent when it is due under the tenancy agreement, whether or not the landlords comply with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. Such a right would include a written order from an Arbitrator allowing them to withhold rent, following a hearing. There is no evidence before me that the Tenants had such an order or they had any other legal authority to withhold rent.

The Landlords also filed evidence supporting the Tenants had failed to pay all rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by personal registered mail sent on June 9, 2013. Section 90 of the Act deems the tenants were served on June 16.

The Notice states that the tenants had five days from the date of service to pay the rent in full 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 from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with the notice to end tenancy as declared by the landlords. I accept the evidence before me that the tenants have failed to pay all 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. Therefore, I find that the landlords are entitled to an Order of possession and a monetary Order for unpaid rent.

Conclusion

I find that the landlords are entitled to an Order of Possession effective **two days after service** on the tenants and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlords are entitled to monetary compensation pursuant section 67 in the amount of **\$880.00** comprised of rent owed.

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 final and binding on the parties, unless otherwise provided under the Act, and 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 27, 2014

Residential Tenancy Branch

