



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAYMAR REALTY LTD
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(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 July 22, 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 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. A party cannot avoid service through a failure or neglect to pick up mail or use this as grounds for a review. As a result, I find that the Tenant was deemed served with Notice of Direct Request documents on July 27, 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?

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement signed by the Tenant and Landlord on June 13, 2013 for a tenancy commencing on July 1, 2013. The monthly rent is \$740.00 payable by the Tenant on the first day of each month;
- A copy of a two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on July 3, 2014. The Notice shows an effective vacancy

date of July 13, 2014 due to \$405.00 in outstanding rent that was due on July 1, 2014 and a \$25.00 late charge;

- A copy of the Proof of Service of the Notice which declares the Notice was served on July 3, 2014 by attaching it to the Tenant's door with a witness who signed the document verifying this method of service;
- The Landlord's Application for Dispute Resolution made on July 22, 2014 claiming outstanding rent in the amount of \$430.00; and
- A payment receipt which shows that the Tenant paid \$350.00 for July, 2014 rent, leaving an outstanding balance of \$405.00 which was the reason why the Notice was served.

Analysis

I have reviewed the written evidence and I 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 July 3, 2014.

The Act states that documents served this way are deemed to have been received three days after being attached. Therefore, I find that the Tenant was deemed to have received the Notice on July 6, 2014 and the effective vacancy date on the Notice is corrected to July 16, 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 five 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 corrected vacancy date of the Notice and the Landlord is entitled to an Order of Possession.

In relation to the Landlord's monetary claim for \$430.00, I accept the Landlord's written evidence that the Tenant has not paid \$405.00 in unpaid rent. As a result, I award the Landlord \$405.00 for July, 2014 outstanding rent.

However, I dismiss the Landlord's claim for the \$25.00 late charge; the Direct Process can only be utilized by Landlords for claims relating to unpaid rent only. Therefore, this portion of the Landlord's monetary claim is dismissed with leave to reapply.

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.

I also grant the Landlord a Monetary Order in the amount of **\$405.00** 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.

The Landlord's application for the \$25.00 late rent charge 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: July 28, 2014

Residential Tenancy Branch

