



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 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 landlord for an Order of possession and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 15, 2015 at 10:49 a.m. the landlord personally served tenant I.M. with the Notice of Direct Request Proceeding, at the rental unit address. The landlord supplied a copy of a proof of service document, signed by the landlord, declaring service occurred.

Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

Therefore, based on the written submissions of the landlord, I find that the tenant I.M. has been served, pursuant to sections 89 and 90 of the Act, with the Direct Request Proceeding documents.

There was no evidence before me that E.M. was served with Notice of the Direct Request Proceeding. Therefore, in the absence of evidence of service to E.M., the application has been amended to remove E.M. as a respondent.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary Order for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;

- A copy of a residential tenancy agreement which was signed by the parties on July 1 2012, indicating a monthly rent of \$750.00 due on or before the 1st day of the month;
- A Notice of Rent Increase, increasing rent to \$760.00 effective July 1, 2013;
- An April 29, 2014 receipt issued for \$385.00 covering \$240.00 for April rent owed and \$145.00 toward May 2014 rent owed, accepted for use and occupancy only with \$615.00 remaining owed for May rent indicated; and
- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities which was issued on May 3, 2014 with a stated effective vacancy date of May 16, 2014, for \$615.00 in unpaid May 2013 rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 day Notice to end tenancy for unpaid rent or utilities by posting to the tenant's door on May 3, 2014 at 1 p.m. The landlord supplied a proof of service document indicating that he posted the Notice, with his spouse present as a witness. The landlord's spouse signed the proof of service document, confirming service occurred.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$615.00 within 5 days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant files an Application for Dispute Resolution within 5 days.

The landlord has claimed compensation in the sum of \$615.00 owed for May 2014.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord.

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3rd day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on May 6, 2014.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on May 16, 2014, I find that the earliest effective date of the Notice is May 16, 2014.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on May 16, 2014, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice.

In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant is conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice; May 16, 2014.

Therefore, I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of possession effective **two days after service** on the tenant. The Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to monetary compensation, pursuant section 65 of the Act, in the amount of \$615.00 May 2014 rent owed and I grant an Order in that amount. This Order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession and a monetary Order for unpaid rent.

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 29, 2014

Residential Tenancy Branch

