



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP PROACT REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR, MNR

Introduction

The landlord applied for an Order of Possession and a Monetary Order for unpaid rent under the Direct Request Procedure, pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act").

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding for each tenant to declare that on June 20, 2014 the landlord sent each tenant a Notice of Direct Request Proceeding via registered mail at the rental unit. The landlord provided the registered mail receipts, including tracking numbers, as proof of service. Section 90 of the Act deems a person to have received mail five days after mailing.

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

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and monetary compensation for unpaid rent?

Background and Evidence

The landlord submitted copies of the following evidentiary material:

- A residential tenancy agreement which was signed by the parties on July 29, 2013, indicating a monthly rent of \$1,500.00 due on the 1st day of every month for a fixed term expiring July 31, 2014;
- A 10 Day Notice to End Tenancy for Unpaid Rent which was issued on June 4, 2014 with a stated effective vacancy date of June 14, 2014, for \$9,600.00 in unpaid rent as of June 1, 2014; and,

- A Proof of Service of the 10 Day Notice indicating the landlord sent the 10 Day Notice to each tenant via registered mail at the rental unit;
- Registered mail receipts dated June 4, 2014, including tracking numbers;
- Tracking information from Canada Post indicating the registered mail sent to the tenants on June 4, 2014 was delivered to the female tenant on June 5, 2014;
- A document dated April 26, 2014 indicating the tenants paid \$1,500.00 for “use and occupancy” and owed rent of \$6,200.00 with a notation by the female tenant that she did not agree with the amount of outstanding rent indicated on the document.

The 10 Day Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants not apply to dispute the Notice to End Tenancy within five days from the date of service.

In filing this Application for Dispute Resolution the landlord requested compensation of \$7,700.00 for unpaid rent and in the details of dispute the landlord indicated the sum was calculated as \$200.00 for January 2014 and \$1,500.00.00 for the months of February 2014 through June 2014.

Analysis

I have reviewed all documentary evidence and accept that the tenants were served with a 10 Day Notice to End Tenancy on June 5, 2014. As such, the stated effective date of the 10 Day Notice automatically changes to read June 15, 2014 pursuant to section 53 of the Act.

I accept the evidence before me that the tenants failed to pay the rent owed or dispute the 10 Day Notice within 5 days of receiving the Notice as permitted under section 46(4) of the Act. Accordingly, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy would end on the effective date of the Notice. Therefore, I find that the tenancy ended June 15, 2014 and the landlord is entitled to an Order of Possession effective two (2) days after service upon the tenants.

I decline to grant the landlord's request for a Monetary Order with this decision as I find the claim is inconsistent with and unsupported by the evidence. For instance, the amount indicated on the 10 Day Notice does not correspond to the amounts indicated in the details of dispute and does not reconcile to the amount indicated on the document dated April 26, 2014. Further, the tenant appears to have disagreed with the landlord's calculations and the landlord did not produce a copy of the ledger to support the landlord's claim. The landlord is granted to leave to reapply for a Monetary Order by way of a participatory hearing.

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenants. The landlord's monetary claim is dismissed with leave to reapply for a participatory hearing.

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 11, 2014

Residential Tenancy Branch

