



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Whitworth Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, OPR

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 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 Proceeding which declares that on July 18, 2014, the landlord served the tenant with the Notice of Direct Request Proceeding via posting on the tenants’ door.

Section 90 of the Act determines that a document served in this manner is deemed to have been received three days after service.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a 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 Request Proceeding;
- A copy of a residential tenancy agreement which was signed by the parties on August 14, 2013, indicating that the tenant is obligated to pay \$975.00 in rent in advance on the first day of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which the landlord served on the tenant on July 8, 2014 for \$975.00 in unpaid rent due in the month of July; and
- A copy of the Proof of Service of the Notice to End Tenancy showing that the landlord served the notice to end tenancy on the tenant by having a witness present when posting the notice on the tenants' door.

Section 90 of the Act provides that because the notice to end tenancy was served by posting on the tenants' door, the tenant is deemed to have received the notice three days later on July 11, 2014.

The Notice restates section 46(4) of the Act which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I find that the tenant received the notice to end tenancy on July 11, 2014. I accept the landlord's undisputed evidence and I find that the tenant did not pay the rental arrears and did not apply to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

Under the provisions of the Direct Request Process a landlord must serve the tenant personally or by registered mail if they seek a monetary order. In the matter before me

the landlord chose to post on the tenants door that they would be preceding by the Direct Request Process. On the "Proof of Service of the Notice of Direct Request" it clearly states "Do not use this method if requesting a Monetary Order". Based on the above I dismiss the landlords request for a monetary order with leave to reapply.

Conclusion

I grant the landlord an order of possession and dismiss their request for a monetary order with leave to reapply.

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 30, 2014

Residential Tenancy Branch

