



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, 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 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 August 8, 2014, the landlord served the tenants with the Notice of Direct Request Proceeding via registered mail.

Section 90 of the Act determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlord, I find that the tenants have 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 May 5, 2010, indicating that the tenants are obligated to pay \$1,325.00 in rent in advance on the first day of the month;
- A copy of a notice of rent increase effective April 1, 2013 which purported to raise the rent from \$1,325.00 to \$1,400.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) which the landlord served on the tenants on July 28, 2014 for \$1,400.00 in unpaid rent due in the month of July; and

- A copy of the Proof of Service of the Notice showing that the landlord personally served the Notice on the tenants.

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

Analysis

The notice of rent increase which was effective April 1, 2013 is not a legal rent increase. The Residential Tenancy Regulations set the maximum rent increase for that year at 3.8% and the landlord's notice of rent increase raised the rent by more than 5.6%. I find the notice of rent increase to be invalid and I find that the tenants have overpaid their rent by \$75.00 per month for the 15 month period from April 2013 – June 2014. This still leaves the tenants in arrears as they can only be credited with \$1,125.00 in overpayment, leaving a balance of \$200.00 owing to the landlord for the month of July.

I find that the tenants received the Notice on July 28, 2014. I accept the landlord's undisputed evidence and I find that the tenants did not pay the rental arrears and did not apply to dispute the Notice and are 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 tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

I accept the evidence before me that the tenants have failed to pay \$200.00 in rent for the month of July. I find that the landlord is entitled to recover the rental arrears and I grant the landlord a monetary order for \$200.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession and a monetary order for \$200.00.

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: August 14, 2014

Residential Tenancy Branch

