



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KELSON GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, 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 July 25, 2014, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail.

Section 90 of the Act determines that documents served in this manner are deemed to have been served five days later, whether or not the tenant refuses or neglects to accept the documents.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents as of July 30, 2014.

Issues to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent and to a Monetary Order for unpaid rent, pursuant to sections 46, 55 and 67 of the Act.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request for the tenant including customer receipt and tracking number for the registered mail;
- A copy of a Residential Tenancy Agreement which was signed by the parties on April 15, 2014, indicating a monthly rent of \$795.00 due on the first day of the month for "Basic Living Space" and \$10.00 per month for "Parking Fee(s)";

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on July 3, 2014 with a stated effective vacancy date of July 13, 2014, for \$1,610.00 in unpaid rent due July 1, 2014(the “10 Day Notice”); and
- A copy of the Landlord’s Application for Dispute Resolution wherein the landlord claims \$1,210.00 and which indicates in the “Details of the Dispute” section, that this figure comprises \$405.00 for the balance of June 2014 rent and \$805 for the July 2014 rent. The landlord further clarifies that “[t]he requested amount is different from the eviction notice of \$1610 because the tenant paid \$400 on July 4, 2014”.

Documentary evidence filed by the landlord indicates that the tenant failed to pay all rent owed and was served the 10 Day Notice by posting on the rental unit door on July 3, 2014 at 3:30 p.m. Section 90 of the Act deems the tenant was served 3 days later, namely, July 6, 2014 and as such, pursuant to section 53, the effective vacancy date is automatically corrected to July 16, 2014.

The 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

The application indicates that the tenant paid \$400.00 on July 4, 2014 leaving a balance of \$1,210.00 owing and, despite this partial payment, did not pay all the rent owed. The tenant also did not apply to dispute the 10 Day Notice within five days from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with the 10 Day Notice as declared by the landlord. I accept the evidence before me that the tenant has failed to pay all the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. Based on the foregoing, 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 effective date of the Notice, namely July 16, 2014. Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent.

Section 55(4) of the Act provides authority for the granting of orders by Direct Request. Orders for Possession and Monetary Orders for payment of rent can be granted through this process. The landlord cannot claim for parking fees through the Direct Request process.

As the landlord claims \$805.00 in rent for the month of July 2014, it is likely this amount includes the rent of \$795.00 in addition to the \$10.00 parking fee. Whether the \$405.00 figure for the “balance of June 2014” comprises rent, or rent and the parking fee is not clear.

The Direct Request process is a mechanism that allows the landlord to apply for an expedited decision, with that the landlord must follow and submit documentation exactly as the *Act* prescribes; there can be no omissions or deficiencies with items being left open to interpretation or inference.

In this case, the landlord appears to be claiming for parking fees, which is not permitted by Direct Request.

Under these circumstances, I grant the Order for Possession however dismiss the landlord's request for a Monetary Order pursuant to section 67 of the Act with leave to reapply. The landlord is at liberty to submit a new application for a Monetary Order through the normal dispute resolution process which includes a participatory hearing as the monetary claim as submitted is not suitable for the Direct Request process.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two (2) days after service** on the tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I dismiss the landlord's application for monetary compensation with leave to reapply for the reasons stated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 01, 2014

Residential Tenancy Branch

