



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAYMAR REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This matter was conducted by way of a Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act* (the “Act”) in response to a Landlord’s application 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 which declares that on August 6, 2014 the Landlord served the Tenant with the Notice of Direct Request by registered mail to the Tenant’s rental suite, pursuant to Section 89(1) (c) of the Act. The Landlord provided a copy of the Canada Post tracking receipt as evidence for this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail or use this reason alone as grounds for a review. As a result, I find the Tenant was deemed served with Notice of Direct Request Proceeding on August 11, 2014.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Has the Landlord established a monetary claim for unpaid rent?

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a tenancy agreement signed by the Landlord on December 9, 2013 and the Tenant on December 5, 2013 for a tenancy commencing on December 8, 2013. The tenancy agreement establishes rent payable in the amount of \$800.00 per month but does not show the day in the month it is payable. The tenancy agreement also allows for a late rent fee of \$25.00.

- A “Tenant Ledger” document which shows the rent payment history during the course of the tenancy. This document also indicates that the rent payable was on the first day of each month;
- A copy of a two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on July 9, 2014 with an effective vacancy date of July 19, 2014 due to a total amount of \$876.44. The Notice indicates that this amount is comprised of \$800.00, \$51.44 and a \$25.00 late fee, all due on July 1, 2014;
- A copy of the Proof of Service of the Notice which shows the Landlord served the Notice to the Tenant on July 9, 2014 by attaching it to the Tenant’s door with a witness who signed the document to verify this method of service;
- The Landlord’s Application for Dispute Resolution made on August 6, 2014 claiming unpaid rent in the amount of \$51.44 for July, 2014. The Landlord indicates that the Tenant paid \$825.00 on July 21, 2014;
- A document dated June 3, 2013 where the Landlord requests the Tenant to pay rent arrears for June, 2014 in the amount of \$51.44.
- A cash receipt which shows that the Tenant paid \$825.00 on July 21, 2014 leaving a balance of \$26.44 for July, 2014 rent. The receipt shows that it was issued to the Tenant for use and occupancy only and that acceptance of payment did not re-instate the tenancy.

Analysis

I find that there is sufficient evidence in the Landlord’s written submissions that the Tenant was required to pay rent on the first day of each month.

The documentary evidence also supports the fact that the Tenant was in rent arrears in June, 2014 in the amount of \$51.44; the Tenant then failed to pay rent on July 1, 2014 in the amount of \$800.00 and with the late charge of \$25.00, this amounted to \$876.44, which was the total amount indicated on the Notice.

I have reviewed the remainder of the documentary evidence and I accept that the Tenant was served with the Notice on July 9, 2014, which complied with the Act, by attaching it to the Tenant’s door with a witness who verified this method of service.

Section 90(c) of the Act states that documents served this way are deemed to have been received three days after being attached to the door. Therefore, I find that the Tenant was deemed to be served the Notice on July 12, 2014 and the effective date of vacancy on the Notice is automatically corrected to July 22, 2014 pursuant to Section 53 of the Act.

I accept the evidence before me that the Tenant failed to dispute the Notice or pay the outstanding rent on the Notice within the five days provided under Section 46(4) of the Act. Therefore, 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 vacancy date of the Notice. As a result, the Landlord is entitled to an Order of Possession.

In relation to the Landlord's monetary claim, the Direct Request process can only be utilized by Landlords for claims relating to unpaid rent only. Therefore, based on the Landlord's written submissions, I find that the Tenant failed to pay rent for June, 2014 in the amount of \$51.44 and \$800.00 for July, 2014. After the Tenant paid \$825.00 on July 21, 2014, this leaves an outstanding balance of **\$26.44** in unpaid rent payable by the Tenant to the Landlord.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the Landlord effective **2 days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I further grant a Monetary Order in the amount of **\$26.44** in favor of the Landlord pursuant to Section 67 of the Act. 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. The Landlord is at liberty to re-apply for the outstanding late rent charges related to this tenancy through the conventional dispute resolution process.

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 12, 2014

