



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHARTWELL CONSTRUCTION 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 September 16, 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 that the Tenant was deemed served with Notice of Direct Request Proceeding on September 21, 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 and the Tenant on September 5, 2012 for a tenancy commencing on September 1, 2012. The tenancy agreement establishes rent payable at the start of the tenancy in the amount of \$1,162.00 due on or before the last day of each month;

- A Notice of Rent Increase, dated May 24, 2014 showing the rent at the time was \$1,162.00 and was being increased by \$25.00 to \$1,187.00, payable by the Tenant starting on September 1, 2014;
- A copy of a two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on September 2, 2014 with an effective vacancy date of September 12, 2014 due to \$1,187.00 in unpaid rent due on August 31, 2014;
- A copy of the Proof of Service of the Notice which shows the Landlord served the Notice to the Tenant on September 2, 2014 by attaching it to the Tenant's door with a witness who signed to verify this method of service; and
- The Landlord's Application for Dispute Resolution made on September 16, 2014 and the Monetary Order Worksheet claiming unpaid rent in the amount of \$1,187.00 for September, 2014.

Analysis

I accept that the rent amount payable under the tenancy agreement changed during the course of the tenancy from \$1,162.00 to \$1,187.00 through a Notice of Rent Increase and that this was the amount payable by the Tenant under the agreement from September 1, 2014 onwards.

I have reviewed the documentary evidence and I accept that the Tenant was served with the Notice, which complied with the Act, on September 2, 2014 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 September 5, 2014 and the effective date of vacancy on the Notice is automatically corrected to September 15, 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 and a Monetary Order for unpaid rent.

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 **\$1,187.00** 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.

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: September 22, 2014

Residential Tenancy Branch

