



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 Proceeding which declares that the Landlord served the Tenant with the Notice of Direct Request documents by attaching it to the Tenant’s door.

With regards to the Landlord’s application for a **Monetary Order** for unpaid rent, Section 89(1) of the Act does **not** allow a Notice of Direct Request Proceeding to be served to a Tenant by posting it to the door. As the Landlord has failed to serve the Notice of Direct Request to the Tenant in accordance with section 89(1) of the Act, I dismiss the monetary portion of the Landlord’s application **with** leave to reapply.

However, in relation to the Landlord’s application for an Order of Possession, Section 89(2) (d) of the Act does allow a Landlord to serve the Notice of Direct Request by posting it to the Tenant’s door. Section 90(c) of the Act provides that a document served in this manner is deemed to have been received three days later. Based on this, I find that the Tenant has been served with the Notice of Direct Request Proceeding only in relation to the Landlord’s application requesting an Order of Possession.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement signed by the Tenant and the Landlord on July 10, 2013 for a tenancy commencing on July 1, 2013. The monthly rent on the agreement is \$615.00 which is payable by the Tenant on the first day of each month;
- A copy of the two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on August 15, 2014 with an effective vacancy date of August 25, 2014 due to \$100.00 in unpaid rent due on August 1, 2014;
- A copy of the Proof of Service of the Notice which declares that the Notice was served on August 15, 2014 by attaching it to the Tenant's door with a witness who signed the document to verify this method of service; and
- The Landlord's Application for Dispute Resolution which was made on August 25, 2014 claiming \$100.00 in outstanding unpaid rent for August, 2014.

Analysis

I have reviewed the documentary evidence and I accept that the Landlord served the Tenant with a Notice that complied with the Act, by attaching it to the Tenant's door with a witness on August 15, 2014.

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 August 18, 2014 and the effective vacancy date on the Notice is deemed to be changed to August 28, 2014 pursuant to Section 53 of the Act.

I accept the evidence before me that the Tenant has 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 and the Landlord is therefore entitled to an Order of Possession.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the Landlord effective **two days after service on the Tenant** as the effective date on the Notice has already passed. This order may then be enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

The Landlord's claim for unpaid rent is dismissed **with** leave to re-apply.

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 09, 2014

Residential Tenancy Branch

