



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEXINGTON ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

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 for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 22, 2014 the Landlord served the Tenant with the Notice of Direct Request Proceeding 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 of this decision. As a result, I find the Tenant was deemed served with Notice of Direct Request Proceeding on August 27, 2014.

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 tenancy agreement signed by the Landlord and Tenant on July 31, 2014 for a tenancy commencing on August 1, 2014. The tenancy agreement requires the Tenant to pay rent in the amount of \$825.00 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 August 2, 2014 with an effective vacancy date of August 12, 2014 for unpaid rent due on August 1, 2014;
- A copy of the Proof of Service of the Notice which shows the Landlord served the Notice to the Tenant on August 2, 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 20, 2014 requesting an Order of Possession for unpaid rent. The application explains that the Tenant paid full rent for August, 2014 on August 13, 2014 and therefore no monetary claim was made; and
- A receipt which shows that the Tenant paid the outstanding rent for August, 2014 on August 13, 2014. The receipt shows that it was issued to the Tenant for use and occupancy only and that acceptance of payment does not re-instate the tenancy.

Analysis

I have reviewed the documentary evidence and I accept that the Tenant was served with the Notice on August 2, 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 August 5, 2014 and the effective date of vacancy on the Notice is automatically corrected to August 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 **within the five days (by August 10, 2014)** provided under Section 46(4) of the Act. I also find that while the Tenant did pay the outstanding rent outside of the five day period allowed under the Act, the Landlord provided the Tenant with a receipt explaining that the rent was being accepted so as to not re-instate the tenancy.

As a result, 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 date of the Notice and the Landlord is 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 **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.

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

