



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 landlords for an order of possession for unpaid rent and a monetary order for unpaid rent.

The landlords submitted a signed proof of service of the notice of direct request proceeding which declares that on August 20, 2014, the landlords served both of the tenants with the notice of direct request proceeding via personal service at the rental unit address at 3:45 p.m.

Based on the written submissions of the landlords, I find that the tenants have been duly served with the direct request proceeding documents as of August 20, 2014.

Issues to be Decided

- Are the landlords entitled to an order of possession for unpaid rent?
- Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the proof of service of the notice of direct proceeding for the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on June 22, 2013, indicating a monthly rent of \$1,400.00 due on the first day of the month; and

- A copy of a 10 day notice to end tenancy for unpaid rent which was issued on August 5, 2014, with a stated effective vacancy date of August 15, 2014, for \$2,100.00 in unpaid rent, comprised of a balance of \$700.00 owing for July 2014 rent due July 1, 2014, and the full amount of \$1,400.00 owing for August 2014 rent, due August 1, 2014.

Documentary evidence filed by the landlords indicate that the tenants had failed to pay the rent owed and was served the 10 day notice to end tenancy for unpaid rent by posting to the tenants' door on August 5, 2014 at 7:15 p.m. Section 90 of the *Act* deems the tenants were served three days later on August 8, 2014, which would correct the above-mentioned effective vacancy date to August 18, 2014. I note that although the landlords' evidence also indicates that the tenants were served personally on August 5, 2014 with the 10 day notice, I find that the landlords' evidence that the tenants pulled into the driveway and that they spoke to each is insufficient to support that the tenants were personally served with the 10 day notice. I do accept; however, that the tenants were served by the landlords by posting the 10 day notice to the tenants' door and that the deemed service provision of section 90 of the *Act* applies in this matter.

The notice states that the tenants had five days to pay the rent in full or apply for dispute resolution or the tenancy would end 10 days from the service date. The tenants did not apply to dispute the notice to end tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy by posting to their door as declared by the landlords.

I accept the evidence before me that the tenants have failed to pay 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 tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the notice, August 18, 2014. Therefore, I find that the landlords are entitled to an order of possession and a monetary order for unpaid rent.

Conclusion

I find that the landlords are entitled to an order of possession effective **two (2) days after service** on the tenants and this order may be filed in the Supreme Court and enforced as an order of that court.

I find that the landlords are entitled to monetary compensation pursuant to section 67 in the amount of **\$2,100.00** comprised of rent owed.

This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: September 4, 2014

Residential Tenancy Branch

