



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

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.

The landlords submitted a signed proof of service of the notice of direct request proceeding which declares that on August 30, 2014, the landlords served the tenant with the notice of direct request proceeding via registered mail.

Section 90 of the *Act* determines that a documents served by registered mail are deemed to have been served five days later. Based on the written submissions of the landlords, I accept that the tenant has been duly served with the direct request proceeding documents, as of September 4, 2014.

Issue to be Decided

- Are the landlords entitled to an order of possession 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 tenant including a registered mail receipt with tracking number;
- A copy of a residential tenancy agreement which was signed by the tenant on June 3, 2014, indicating a monthly rent of \$1,500.00 which was due on the first day of the month; and

- A copy of a document from the Land Title Office dated July 29, 2014 supporting that landlord D.D., purchased the property from the original landlords who signed the tenancy agreement, J.R. and J.C.
- A copy of a 10 day notice to end tenancy for unpaid rent which was issued on August 2, 2014, with a stated effective vacancy date of August 11, 2014, for \$1,500.00 in unpaid rent due August 1, 2014.

Documentary evidence filed by the landlords indicates that the tenant had failed to pay the rent owed and was served the 10 day notice to end tenancy for unpaid rent by personally serving the tenant at the rental unit address at 5:07 p.m. on August 2, 2014, which was witnessed by third party B.D. As a result and pursuant to section 53 of the *Act*, the effective vacancy date automatically corrects under the *Act* to August 12, 2014.

The notice states that the tenant 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 tenant did not apply to dispute the notice to end tenancy within five days from the date of service.

The landlords provided a copy of a receipt for “use and occupancy” dated August 8, 2014. The landlords also write in their evidence that the tenant did not pay the \$1,500.00 in outstanding rent due August 1, 2014 until August 8, 2014.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with the notice to end tenancy as declared by the landlord.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46(4) of the *Act*. In the matter before me, the tenant paid the rent owed on August 8, 2014, which is one day late as the tenant was served on August 2, 2014 with the 10 day notice which would make the rent due to the landlords no later than August 7, 2014.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective corrected effective date of the notice, August 12, 2014. Therefore, I find that the landlords are entitled to an order of possession for unpaid rent.

Conclusion

I find that the landlords are entitled to an order of possession effective **two (2) days after service** on the tenant and this order may be filed in the Supreme Court 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 9, 2014

Residential Tenancy Branch

