



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

Introduction

This matter was conducted 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 landlord for an Order of possession and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 21, 2014 the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit address. The landlord provided a Canada Post receipts and tracking numbers as evidence of service to each tenant.

Section 90 of the Act determines that a document is deemed to have been served on the 5th day after mailing.

Therefore, based on the written submissions of the landlord, I find that each tenant has been served, pursuant to sections 89 and 90 of the Act, with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary Order for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each tenant;
- A copy of a residential tenancy agreement which was signed by the parties with no date identified, for a tenancy commencing on April 1, 2014, indicating a monthly rent of \$1,800.00 due on the 1st day of the month; and

- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities which was issued on August 3, 2014 with a stated effective vacancy date of August 14, 2014, for \$600.00 in unpaid rent due on August 1, 2014 and \$153.78 utilities owed.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and were served the 10 day Notice to end tenancy for unpaid rent or utilities by posting to the tenant's door on August 3, 2014 at 4:30 p.m. The landlord supplied a proof of service of document, signed by the landlord and a witness to service, T.F.; confirming service occurred.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$600.00 rent and \$153.78 utilities within 5 days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within 5 days.

There was no monetary work sheet before me. The application for dispute resolution indicated that the tenants failed to pay \$600.00 due on August 1, 2014 and that a payment for utility costs indicated on the application was made. However, the total claimed by the landlord included the unpaid rent plus the sum of utilities.

Analysis

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

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3rd day after it is posted. Therefore, I find that the tenants received the Notice to end tenancy on August 6, 2014.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenants are deemed to have received this Notice on August 6, 2014, I find that the earliest effective date of the Notice is August 16, 2014.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was August 16, 2014.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on August 16, 2014, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice.

In the circumstances before me I have no evidence that the tenants exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenants are conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice; August 16, 2014.

Therefore, I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of possession effective **two days after service** on the tenants. The Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to monetary compensation, pursuant section 65 of the Act, in the amount of \$600.00 August 2014 rent owed and I grant an Order in that amount. 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.

The landlord failed to supply any evidence of service of a demand letter to the tenants, requesting utility payment. Further, the application for dispute resolution showed only rent owed. It appears that the landlord has incorrectly completed the application, by indicating utilities were in fact paid. A monetary work sheet, setting out the sums owed was not before me. Therefore, as I cannot assume what has or has not been paid, I find that the claim for utilities is dismissed with leave to reapply.

Conclusion

The landlord is entitled to an Order of possession and a monetary Order for unpaid rent.

The claim for unpaid utilities is dismissed with leave to reapply.

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 08, 2014

Residential Tenancy Branch

