



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mee Hoi Brothers Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* 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 based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 26, 2014, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on September 2, 2014, the fifth business day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on November 3, 2011, indicating a monthly rent of \$925.00 due on the 1st day of the month for this tenancy;

- A Monetary Order Worksheet showing that the tenant paid \$460.00 to the landlord of an apparently requested \$960.00 on July 3, 2014, and \$1,000.00 on August 23, 2014, leaving \$485.00 owing as of the date the landlord applied for a monetary Order; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenant's door on August 18, 2014, with a stated effective vacancy date of August 18, 2014, for \$960.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the tenant failed to pay all outstanding rent was served by posting the 10 Day Notice to the tenant's door at 11:00 a.m. on August 5, 2014. In accordance with sections 88 and 90 of the *Act*, the tenant was deemed served with this 10 Day Notice on August 8, 2014, three days after its posting.

The Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenant 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 tenant has been deemed served with notice to end tenancy as declared by the landlord.

I find considerable important information missing in the landlord's application. For example, based on the landlord's 10 Day Notice it would appear that the monthly rent may have increased since 2011 from \$925.00 to \$960.00. However, the landlord provided no copy of any Notices of Rent Increase issued to the tenant that would enable the landlord to obtain this increased monthly rent. In addition, the landlord has provided no copies of a tenant rent ledger or receipts to establish the amounts owing for this tenancy, what has been paid or the basis for the landlord's acceptance of a \$1,000.00 payment from the tenant five days after the 10 Day Notice was to have taken effect. Based on the limited documentation provided by the landlord, I find that the landlord has not established the correct monthly rent for this tenancy nor the basis for the landlord's claim for a monetary award of \$485.00. With little other reliable evidence available, I find that the landlord's acceptance of the \$1,000.00 payment on August 23, 2014 may very well have had the effect of reinstating this tenancy and negating the 10 Day Notice issued to the tenant. Under these circumstances and since the landlord has not submitted sufficient evidence to substantiate either the application for an Order of Possession or the request for a monetary Order, I dismiss the landlord's application with leave to reapply.

Conclusion

The landlord's application is dismissed with leave to reapply.

Unless the landlord can demonstrate that the \$1,000.00 payment on August 23, 2014 was not accepted as a rental payment from the tenant, the landlord would need to issue a new 10 Day Notice if rent remains outstanding at this time and the landlord wishes to end this tenancy for unpaid rent.

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 11, 2014

Residential Tenancy Branch

