



Dispute Resolution Services

Page: 1

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 due to unpaid rent.

The Direct Request process is a mechanism that allows the landlord to apply for an expedited decision without a participatory hearing. As a result, the landlord must follow and submit documentation **exactly** as the *Act* prescribes and there can be no omissions or deficiencies within the written submissions that are left open to interpretation or inference.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 27, 2014 the landlords served the tenants with the Notice of Direct Request Proceeding by posting the documents to the tenants' door. Section 90 of the *Act* determines that a document is deemed to have been served on the third day after was posted; however, with regard to the landlords' application for a Monetary Order for unpaid rent; sections 88 and 89 of the *Act* determine the method of service for documents. The Landlords have applied for a Monetary Order which requires that the landlords serve the tenant as set out under Section 89(1). As the

landlords posted the Notice of Direct Request Proceeding to the tenant's door, this method of service is not acceptable under section 89(1) of the *Act*. The Direct Request application form provides this information to applicants and informs the landlords not to use this method of service if requesting a Monetary Order. Consequently, this section of the landlords' application is dismissed with leave to reapply. The proceeding continued regarding the landlords application for an Order of Possession.

Based on the written submissions of the landlord's, I find that the tenants have been served with the Dispute Resolution Direct Request Proceeding documents regarding an Order of Possession.

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for the tenants;
- A copy of a residential tenancy agreement which was signed by the tenants on July 20, 2014 and by the landlords on August 01, 2014 for a tenancy beginning August 01, 2014 for the monthly rent of \$1,000.00 due on the 1st of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, September 03, 2014 with an effective vacancy date of October 10, 2014 due to \$1,000.00 in unpaid rent.
- A Monetary Order worksheet showing that the tenants paid \$650.00 of the outstanding rent on September 05, 2014 leaving an unpaid balance of \$350.00 which will not be dealt with at this hearing

Documentary evidence filed by the landlords indicates that the tenants had failed to pay the full rent owed for the month of September. The landlords have provided

documentary evidence that indicates the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent which was sent by registered mail on September 03, 2014 and therefore is deemed served five days later.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with Notice to End Tenancy as declared by the landlords. The Notice is deemed to have been received by the tenants on September 08, 2014; however, the effective date of the Notice remains as October 10, 2014. I accept the evidence before me that the tenants have failed to pay all the rent owed for September, 2014 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 will end on the effective date of the Notice.

Conclusion

I find that the landlords are entitled to an Order of Possession, pursuant to section 55 of the *Act*, effective **on October 10, 2014**. This Order must be served on the tenants and may be filed in the Supreme Court and enforced as an Order of that Court.

The landlords claim for a Monetary Order to recover unpaid rent 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 25, 2014

Residential Tenancy Branch

