



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 an *ex parte* Direct Request Proceeding, pursuant to subsection 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 17 October 2014, the landlord sent each of the tenants the Notices of Direct Request Proceeding by registered mail. The landlord provided a copy of the Canada Post customer receipts containing the tracking numbers 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 tenants have been deemed served with the Direct Request Proceeding documents on 22 October 2014, the fifth day after their registered mailing.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent pursuant to section 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:

- copies of the Proofs of Service of the Notice of Direct Request Proceeding served to each of the tenants;

- a copy of a residential tenancy agreement which was signed by the landlord and the tenants on 26 February 2013, indicating a monthly rent of \$965.00 due on the 1st day of the month for a tenancy commencing on 1 April 2013;
- a copy of a Notice of Rent Increase dated 18 December 2013, that raises the tenants' rent from \$965.00 to \$985.00 beginning 1 April 2014;
- a Monetary Order Worksheet showing the rent owing during this tenancy: "May 1st, 2014" rent of \$20.00; and
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenants' door at 1559 on 8 October 2014, with a stated effective vacancy date of 22 October 2014, for \$20.00 in unpaid rent due on 1 May 2014.

Documentary evidence filed by the landlord indicates that the tenants were served by posting the 10 Day Notice to the tenants' door at 1559 on 8 October 2014. This posting was witnessed. In accordance with sections 88 and 90 of the Act, the tenants were deemed served with this 10 Day Notice on 11 October 2014, three days after its posting.

The 10 Day Notice states that the tenants 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 tenants did not apply to dispute the 10 Day Notice within five days from the date of service.

In addition to the above-noted documents, the landlord provided a ledger setting out rent owing and collected from 2 December 2013 to 2 October 2014. This document contains the following entries:

Date	Item	Amount
1 April 2014	April rent	985.00
7 April 2014	April rent and partial late fee paid	-1000.00
16 April 2014	Late fee	25.00
1 May 2014	May rent	985.00
2 May 2014	May rent paid	-965.00
1 June 2014	June rent	985.00
11 June 2014	June rent paid	-985.00
1 July 2014	July rent	985.00
4 July 2014	July rent paid	-985.00
11 July 2014	June late fee	25.00
11 July 2014	July late fee	25.00

1 August 2014	August rent	985.00
5 August 2014	August rent paid	-985.00
1 September 2014	September rent	985.00
5 September 2014	September rent paid	-985.00
1 October 2014	October rent	985.00
2 October 2014	October rent paid	-985.00
	Balance	\$80.00

Analysis

The 10 Day Notice states that it is issued for failure to pay \$20.00 of rent on 1 May 2014. In the absence of any indication to which balance the tenants' payments were to be applied (for example, if made by cheque, the notation line could contain a memo marking the payment for June's rent), I find that the payments received by the landlord were first applied to rental arrears and then applied to the current month's rent. Accordingly, I find that the entirety of May's rent was paid by 11 June 2014 and thus that there was no outstanding balance remaining on May's rent as at the date of issue for the 10 Day Notice, that is, 8 October 2014.

As of the date of the 10 Day Notice the landlord could have issued a notice for non payment of October's rent. This has not occurred. As this has not occurred I dismiss this application without leave to reapply because the 10 Day Notice was invalidly issued.

Conclusion

I dismiss the landlord's application without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: October 29, 2014

Residential Tenancy Branch