



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 a Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act* (the “Act”) in response to a Landlords’ application for an Order of Possession and a Monetary Order for unpaid rent.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request which declares that on October 2, 2014 the Landlord served each Tenant with the Notice of Direct Request by registered mail, pursuant to Section 89(1) (c) of the Act.

The Landlords provided a copy of the Canada Post tracking receipts as evidence for this method of service. Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail or use this reason alone as grounds for a review. As a result, I find that the Tenants were deemed served on October 7, 2014.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Have the Landlords established a monetary claim for unpaid rent?

Background and Evidence

The Landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement signed by the Landlords and the Tenants on February 7, 2014 for a tenancy commencing on March 1, 2014. The tenancy agreement establishes rent payable in the amount of \$1,700.00 on the first day of each month;
- A copy of a two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on September 10, 2014 with an effective vacancy date of September 20, 2014 due to \$1,700.00 in unpaid rent payable on September 1, 2014;

- A copy of the Proof of Service of the Notice which shows the Landlords personally served the Notice to the Tenants on September 10, 2014 in the presence of a witness who signed to verify this method of service;
- The Landlords' Application for Dispute Resolution made on October 2, 2014. The Landlords explain that on September 10, 2014 the Tenants paid \$850.00 towards the September, 2014 rent, therefore leaving a balance of \$850.00 being the amount now claimed from the Tenants.
- A copy of a cheque issued by the Tenants dated September 15, 2014 indicating that it was being provided to the Landlords for the balance of the September, 2014 rent after the Notice had been served to them. However, the Landlords provide written evidence that this outstanding balance cheque for September, 2014 was returned unpaid because the Tenants' account was closed.

Analysis

I have reviewed the documentary evidence and I accept that the Tenants were personally served with the Notice, which complied with the Act, on September 10, 2014. I accept the evidence before me that the Tenants failed to dispute the Notice or **pay** the outstanding rent for September, 2014 within the five days provided under Section 46(4) of the Act. Therefore, I find that the Tenants are conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on the vacancy date of the Notice. As a result, the Landlords are entitled to an Order of Possession and a Monetary Order.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the Landlords effective **2 days after service on the Tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court. I further grant a Monetary Order in the amount of **\$850.00** in favor of the Landlords pursuant to Section 67 of the Act. 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.

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: October 10, 2014

Residential Tenancy Branch

