



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This matter was conducted in response to a Landlord's Application for Direct Request for an Order of Possession and a Monetary Order for unpaid rent, pursuant to Section 55(4) of the *Residential Tenancy Act* (the "Act").

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding documents which declares that on October 17, 2014 the Landlord served the Tenant with the documents by registered mail to the Tenant's rental suite, pursuant to Section 89(1) (c) of the Act.

The Landlord provided a copy of the Canada Post tracking receipt 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 Tenant was deemed served with Notice of Direct Request Proceeding on October 22, 2014.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Has the Landlord established a monetary claim for unpaid rent?

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a tenancy agreement signed by the Landlord and the Tenant on May 28, 2005 for a tenancy commencing on the same day. The tenancy agreement establishes that rent was payable at the start of the tenancy in the amount of \$725.00 on the first day of each month;

- Five Notice of Rent Increase forms (RTB 7), all showing the rent was gradually increased from \$725.00 to the current amount of rent payable for \$872.59. The rent was increased each year in accordance with the Act;
- A copy of a two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on September 16, 2014 with an effective vacancy date of September 26, 2014 due to \$1,745.18 in unpaid rent due on September 1, 2014;
- A copy of the Proof of Service of the Notice which shows the Landlord served the Notice to the Tenant on September 16, 2014 by attaching it to the Tenant's door with a witness who signed to verify this method of service;
- The Landlord's Application for Direct Request made on October 14, 2014 and the Monetary Order Worksheet claiming unpaid rent for July and September, 2014.

Analysis

I accept that the rent amount payable under the tenancy agreement changed during the course of the tenancy from \$725.00 to \$872.59 per month, as evidenced by the five Notice of Rent Increase forms and that this was the amount payable by the Tenant under the agreement when the Notice was served.

I have reviewed the documentary evidence and I accept that the Tenant was served with the Notice on September 16, 2014, which complied with the Act, by attaching it to the Tenant's door with a witness who verified this method of service.

Section 90(c) of the Act states that documents served this way are deemed to have been received three days after being attached to the door. Therefore, I find that the Tenant was deemed to be served the Notice on September 19, 2014 and the effective date of vacancy on the Notice is automatically corrected to September 29, 2014 pursuant to Section 53 of the Act.

I accept the evidence before me that the Tenant failed to dispute the Notice or pay the outstanding rent on the Notice for the 2 months within the five days provided under Section 46(4) of the Act. Therefore, I find that the Tenant is conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on the corrected vacancy date of the Notice. As a result, the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the Landlord effective **2 days after service on the Tenant**. 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 **\$1,745.18** in favor of the Landlord pursuant to Section 67 of the Act. This order must be served on the Tenant 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 23, 2014

Residential Tenancy Branch

