



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEITHAL CONSTRUCTION CO LTD
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 which declares that on October 24, 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 Landlord 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 with these documents on October 29, 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 Tenants on August 20, 2014 for a tenancy commencing on September 1, 2014. The tenancy agreement establishes rent payable in the amount of \$1,100.00 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 October 15, 2014 with an effective vacancy date of October 25, 2014 due to \$1,125.00 in unpaid rent due on October 1, 2014;
- A copy of the Proof of Service of the Notice which shows the Landlord served the Notice to the Tenants on October 15, 2014 by attaching it to the Tenants' door with a witness who signed and produced a statement to verify this method of service;
- The Application for Direct Request made on October 24, 2014 and the Monetary Order Worksheet claiming unpaid rent for September, 2014 in the amount of \$1,100.00; and
- A document which indicates that the Tenant is being charged with a non-sufficient funds fee of \$25.00.

Analysis

I have reviewed the documentary evidence and I accept that the Tenants were served with the Notice, which complied with the Act, on October 15, 2014 by attaching it to their door with a witness.

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 Tenants were deemed to be served the Notice on October 18, 2014 and the effective date of vacancy on the Notice is automatically corrected to October 28, 2014 pursuant to Section 53 of the Act.

I accept the evidence before me that the Tenants failed to dispute the Notice or pay the outstanding rent on the Notice 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 corrected vacancy date of the Notice. As a result, the Landlord is entitled to an Order of Possession.

In relation to the Landlord's monetary claim for \$1,125.00, I accept the Landlord's written evidence that the Tenants have not paid \$1,100.00 in unpaid rent. As a result, I award the Landlord \$1,100.00 for October, 2014 rent.

However, I dismiss the Landlord's claim for the \$25.00 insufficient funds fee; the Direct Request process can only be utilized by Landlords for claims relating to unpaid rent

only. This information is explained on the second page of the Application for Direct Request. Therefore, this portion of the Landlord's monetary claim is dismissed with leave to reapply.

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 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 **\$1,100.00** in favor of the Landlord 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.

The Landlord's application for the \$25.00 insufficient funds fee is dismissed with leave to re-apply.

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 30, 2014

Residential Tenancy Branch

