



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 by way of a Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act* (the "Act") in response to a Landlord's application for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request which declares that on October 1, 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 6, 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 December 1, 2013 for a one year fixed term tenancy commencing on the same day. The tenancy agreement establishes rent payable in the amount of \$900.00 on the first day of each month;

- A 'Rental Incentive Agreement' document which indicates that as the Tenants had signed a fixed term agreement of one year, the rent payable was reduced by \$75.00 for a total amount payable during this period to \$825.00 per month.
- 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 \$825.00 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 Tenants on September 16, 2014 by attaching it to the Tenants' door with a witness who signed to verify this method of service; and
- The Landlord's Application for Dispute Resolution made on September 26, 2014 and the Monetary Order Worksheet claiming unpaid rent for September, 2014.

Analysis

I accept the written evidence that the rent payable by the Tenants under the agreement was \$825.00 per month. However, I would caution the Landlord against using such rent incentives as this may contradict the rent increase provisions after the fixed term period ceases and there is no indication of whether the Tenants are required to move out after this point.

I have reviewed the documentary evidence and I accept that the Tenants were served with the Notice, which complied with the Act, on September 16, 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 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 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 and a Monetary Order.

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 **\$600.00** 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.

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 07, 2014

Residential Tenancy Branch

