



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 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 Proceeding documents which declares that on September 24, 2014 the Landlord served the Tenant with the Notice of Direct Request by registered mail to the Tenant’s mailing address, 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 these documents on September 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 Tenant on May 26, 2013 for a tenancy commencing on June 1, 2013. The tenancy agreement establishes rent which is payable in the amount of \$800.00 on or before the first calendar 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 August 25, 2014 with an vacancy date of August 31, 2014 due to \$800.00 in unpaid rent due on August 1, 2014;

- A copy of the Proof of Service of the Notice which shows the Landlord served the Notice to the Tenant on August 25, 2014 by registered mail to the Tenant's mailing address. A copy of the Canada Post tracking number and mailing report indicates that the Tenant received and signed for the Notice on August 29, 2014; and
- The Landlord's Application for Dispute Resolution made on September 23, 2014 and the Monetary Order Worksheet claiming unpaid rent for August, 2014.

Analysis

I have reviewed the documentary evidence and I accept that the Tenant was served with the Notice, which complied with the Act, on September 25, 2014 by registered mail to the Tenant's mailing address which was the same address where the Notice of Direct Request Proceedings documents were sent to. The Canada Post written evidence provided by the Landlord indicates that the Tenant received and signed for the Notice on August 29, 2014. As a result, the effective date of vacancy on the Notice is automatically corrected to September 8, 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 within the five days after receiving the Notice 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 as the vacancy date of the Notice has now passed.

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 **\$800.00** 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 02, 2014

Residential Tenancy Branch

