



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the landlords 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 Proceeding which declares that on October 23, 2014, the landlords served the respondents with the Notice of Direct Request Proceeding via registered mail.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later.

Based on the written submissions of the landlords, I find that the respondents have been duly served with the Direct Request Proceeding documents.

Preliminary matter

In this case, the landlords have filed a copy of the tenancy agreement listing the two respondents as tenants. However, the tenancy agreement was only signed by KW. As BW has not signed the tenancy, I find BW is an occupant and has no legal rights or obligation under the tenancy agreement or the Act. Therefore, I have amended the style of cause by removing BW. This hearing proceeded only against the tenant KW.

Issues to be Decided

The issues to be decided are whether the landlords are entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 46, 55 and 67 of the Act.

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on June 29, 2014, indicating a monthly rent of \$850.00 due on the first day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 2, 2014 with a stated effective vacancy date of October 12, 2014, for \$510.00 in unpaid rent.

Documentary evidence filed by the landlords indicates that the tenant had failed to pay all rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by, posting on the door on October 2, 2014, which was witnessed. Section 90 of the Act deems the tenant was served on October 5, 2014, which would automatically correct the above mentioned effective vacancy date to October 15, 2014.

The Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlords.

I accept the evidence before me that the tenant has failed to pay all the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid rent.

Conclusion

I find that the landlords are entitled to an Order of Possession effective **two days after service** on the tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlords are entitled to monetary compensation pursuant section 67 in the amount of **\$510.00** comprised of rent owed. 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 30, 2014

Residential Tenancy Branch

