



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BLUE SKY PROPERTIES INC.
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 (the "Application") 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 November 12, 2014 the Landlord's agent served the Tenant with these 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 November 17, 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 September 15, 2012 for a tenancy which started on October 1, 2012. The tenancy agreement establishes that rent is payable in the amount of \$780.00 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 6, 2014 with an effective vacancy date of October 15, 2014 due to \$800.00 in unpaid rent due on October 1, 2014;

- A copy of the Proof of Service of the Notice which shows the Landlord's agent served the Notice to the Tenant on October 6, 2014 by attaching it to the Tenant's door with a witness who signed to verify this method of service;
- The Application made on November 12, 2014 and the Monetary Order Worksheet claiming unpaid rent for October, 2014 which also shows that the unpaid rent being claimed is **\$780.00** and that the \$800.00 documented on the Notice included a \$20.00 late fee which is not being claimed in this Application.

Analysis

I have reviewed the documentary evidence and I accept that the Tenant was served with the Notice which complied with the Act, by attaching it to the Tenant's door on October 6, 2014 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 October 9, 2014 and the effective date of vacancy on the Notice is automatically corrected to October 19, 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 for October, 2014 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. and 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 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 **\$780.00** 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: November 18, 2014

Residential Tenancy Branch

