



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE DEVELOPMENTS 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 (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 which declares that on December 15, 2014 the Landlord personally served the Tenant with the Notice of Direct Request Proceeding in the presence of a witness who verified this method of service. Based on the written submissions of the Landlord, I find that the Tenant was served with the Notice of Direct Request Proceeding in accordance with Section 89(1) (a) of the Act.

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 Tenant on November 29, 2011 for a tenancy commencing on December 1, 2011. The tenancy agreement established rent at the start of the tenancy in the amount of \$1,092.00 payable in advance on or before the last day of each month;
- A Notice of Rent Increase, dated August 30, 2012 showing the rent at the time was \$1,092.00 and was being increased by \$10.00 to \$1,102.00, payable by the Tenant starting in December, 2012;

- A copy of a two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on December 4, 2014 with an effective vacancy date of December 14, 2014 due to \$1,102.00 in unpaid rent due on November 30, 2014;
- A copy of the Proof of Service of the Notice which shows the Landlord served the Notice to the Tenant on December 4, 2014 by attaching it to the Tenant's door with a witness who signed the document to verify this method of service; and
- The Landlord's Application made on December 15, 2014 claiming unpaid rent in the amount of \$1,102.00 for December, 2014.

Analysis

I accept that during the tenancy the rent amount payable under this tenancy changed from \$1,092.00 to \$1,102.00 through a Notice of Rent Increase issued to the Tenant in 2013.

I have reviewed the remainder of the documentary evidence and I accept that the Tenant was served with the Notice on December 4, 2014, which complied with the Act, by attaching it to the Tenant's door 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 December 7, 2014 and the effective date of vacancy on the Notice is automatically corrected to December 17, 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 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.

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 **\$1,102.00** 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: December 18, 2014

Residential Tenancy Branch

