



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 in response to a Landlord's Application for Direct Request 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 which declares that on December 24, 2014 the Landlord's agent 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 the documents on December 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 March 22, 2014 for a tenancy commencing on April 1, 2014. The agreement establishes that rent is payable in the amount of \$925.00 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 December 6, 2014 with an effective vacancy date of December 16, 2014 due to \$925.00 in unpaid rent due on December 1, 2014;

- A copy of the Proof of Service of the Notice which shows the Landlord's agent served the Notice to the Tenants on December 6, 2014 by attaching it to the Tenants' door with a witness who signed the Proof of Service document verifying this method of service; and;
- The Application for Direct Request made on December 23, 2014 and the Monetary Order Worksheet claiming unpaid rent for December 2014 in the amount of \$925.00

Analysis

I have reviewed the evidence and I accept that the Tenants were served with the Notice, which complied with the Act, on December 6, 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 December 9, 2014 and the date of vacancy on the Notice is automatically corrected to December 19, 2014 pursuant to Section 53 of the Act.

I accept the evidence 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 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 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 **\$925.00** 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: December 30, 2014

Residential Tenancy Branch

