



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 landlord 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 which declares that on November 21, 2014, the landlord served the tenants with the Notice of Direct Request Proceeding via personal service.

Section 90 of the Act determines that a document served in this manner is deemed to have been received on the same day of service.

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

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding;
- A copy of a residential tenancy agreement which was signed by the parties on September 23, 2013 indicating that the tenant is obligated to pay \$1,500.00 in rent in advance on the first day of the month;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which the landlord served on the tenant on October 27, 2014 for \$1,000.00 in unpaid rent due on October 1, 2014. The notice displays rent owed as "\$250.00 + damage deposit (\$750.00)" and served in person and by posting it to the rental unit door. The notice does not display a complete address or an effective end of tenancy date.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which the landlord served on the tenant on November 2, 2014 for \$1,500.00 in unpaid rent due on November 1, 2014 and served in person and by posting it to the rental unit door. The notice displays an effective end of tenancy date of November 15, 2014.
- A copy of the Proof of Service of the Notice to End Tenancy showing that the landlord served the notice to end tenancy dated October 27, 2014 on the tenant in person with a witness. A copy of the Proof of Service of the Notice to End Tenancy showing that the landlord served the notice to end tenancy dated November 2, 2014 on the tenant in person with a witness.

The Notice restates section 46(4) of the Act which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears. The landlord also submitted a monetary worksheet which states that the original claim of \$1,750.00 included a claim of \$750.00 for a security deposit and a total of \$1,000.00 for unpaid rent. In a fax received by the Residential Tenancy Branch dated November 18, 2014 the landlord amended the monetary claim to \$1,500.00. In a typed letter from the landlord dated November 24, 2014, the landlord states that no rent for November is owed as it was received from the tenant. The landlord indicated in this letter that an order of possession was still being sought. As such no further action is required for the monetary claim.

Analysis

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

I accept the evidence before me that the tenant has failed to pay 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 for unpaid rent.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and this Order may be filed in the Supreme Court 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 01, 2014

Residential Tenancy Branch

