



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atira Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR.

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 24, 2014 the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the written submissions of the landlord, I find that the tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issue to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent, pursuant to sections 46, & 55 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on August 31, 2011 for a tenancy beginning September 1, 2011 for the monthly rent of \$1026.00 due on 1st of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, December 11, 2014 with an effective vacancy date of December 22, 2014 due to \$ in unpaid rent.

Documentary evidence filed by the landlord(s) indicates that the tenant(s) had failed to pay the rent owed for the month of December 2014 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by hand on December 11, 2014.

The Notice states that the tenant(s) had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant(s) did not apply to dispute the Notice to End Tenancy within five days.

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, December 22, 2014.

The landlord however has subsequently accepted rent for a period after the end of tenancy date and therefore has re-established the tenancy, as the rent was not accepted for use and occupancy only.

Conclusion

This request for an Order of Possession is denied as the landlord has re-established the tenancy.

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: January 07, 2015

Residential Tenancy Branch

