



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 December 24, 2014, the landlord served the tenants with the Notice of Direct Request Proceeding via registered mail. A copy of the registered mail tracking number was also submitted in evidence.

Section 90 of the Act determines that documents served in this manner are deemed to have been served five days later, whether or not the tenants refuse or neglect to accept the documents.

Based on the written submissions of the landlord, I find that the tenants have been duly served with the Direct Request Proceeding documents as of December 29, 2014.

Issues to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 46, 55 and 67 of the Act.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant confirming the tenant was personally served by registered mail as well as the registered mail tracking number;
- A copy of a Residential Tenancy Agreement which was signed by the parties on August 9, 2014, indicating a monthly rent of \$3,500.00 due on the first day 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 a stated effective vacancy date of December 22, 2014, for \$3,500.00 in unpaid rent ("10 Day Notice") for the month of December 2014 (the "10 Day Notice").

Documentary evidence filed by the landlord indicates that the tenants failed to pay all rent owed and were served the 10 Day Notice by posting on the rental unit door. Section 90 of the Act deems the tenants were served three days later, namely: December 14, 2014 and as such, pursuant to section 53, the effective vacancy date is automatically corrected to December 24, 2014.

The 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. Documentary evidence filed by the landlord indicates the tenants did not pay the rent in full nor did they apply to dispute the 10 Day Notice within five days from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with the 10 Day Notice as declared by the landlord.

I accept the evidence before me that the tenants have failed to pay all the rent owed in full or make an application to dispute the 10 Day Notice within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, 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* effective date of the 10 Day Notice. Therefore, I find that the landlord is entitled to an Order of possession and a Monetary Order for unpaid rent.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two (2) days after service** on the tenants and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$3,500.00** comprised of rent owed. This Monetary 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 final and binding on the parties, unless otherwise provided under the Act, and 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

