



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 documents which declares that on January 7, 2015 the Landlord served the Tenant with the documents by registered mail to the Tenant's rental suite, pursuant to Section 89(1) (c) of the Act.

The Landlord provided a copy of the Canada Post tracking receipt 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 of this decision. As a result, I find that the Tenant was deemed served with Notice of Direct Request Proceeding on January 12, 2015.

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 residential tenancy agreement signed by the Tenant on July 17, 2013 for a tenancy commencing on May 15, 2012. The tenancy agreement establishes that rent is payable in the amount of \$1,250.00 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 22, 2014 with an effective vacancy date of January 4, 2015 due to \$2,200.00 in unpaid rent due on December 1, 2014;
- A copy of the Proof of Service of the Notice which shows the Landlord served the Notice to the Tenant on December 22, 2014 by attaching it to the Tenant's door with a witness who signed to verify this method of service; and
- The Landlord's Application for Direct Request made on January 7, 2015. In the details of rent section, the Landlord indicates that the rent outstanding for December 2014 is **\$1,250.00** but makes a total monetary claim for **\$2,200.00**. No further explanation was provided for the difference in these amounts.

Analysis

I have reviewed the documentary evidence and I accept that the Tenant was served with the Notice on December 22, 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 25, 2014.

I accept the evidence before me that the Tenant failed to dispute the Notice and I am satisfied that the Tenant has failed to pay rent to the Landlord 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 vacancy date of the Notice. As a result, the Landlord is entitled to an Order of Possession.

In determining the confusing evidence provided by the Landlord in relation to the monetary claim for unpaid rent, I am only satisfied that the Tenant has failed to pay rent for the month of December, 2014 in the amount of \$1,250.00, as required by the written tenancy agreement provided.

There is insufficient evidence provided by the Landlord as to why the Landlord seeks to claim an addition \$950.00. Therefore, I am only prepared to issue the Landlord with a Monetary Order for December, 2014 rent. However, the Landlord is at liberty to make a separate claim for any further outstanding rent for this tenancy.

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 **\$1,250.00** 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: January 13, 2015

Residential Tenancy Branch

