



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 Landlords' 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 Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 13, 2015 the Landlords served the Tenant with the Notice of Direct Request by registered mail, pursuant to Section 89(1) (c) of the Act. The Landlords 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. As a result, I find that the Tenant was deemed served with these documents on January 18, 2015.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Have the Landlords established a monetary claim for unpaid rent?

Background and Evidence

The Landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement signed by the Landlords and Tenant on October 1, 2014 for a tenancy commencing on the same day. The monthly rent is \$1,600.00 payable by the Tenant 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 January 2, 2015 with an effective vacancy date of January 12, 2015 for \$1,600.00 in unpaid rent due on January 1, 2015;

- A copy of the Proof of Service of the Notice which shows the Landlords served the Notice to the Tenant on January 2, 2015 by attaching it to the Tenant's door with a witness who signed the document to verify this method of service;
- The Application for Direct Request made on January 13, 2015 claiming unpaid rent for January, 2015 in the amount of \$1,600.00.

Analysis

I have reviewed the written evidence and I accept that the Tenant was served with the Notice, which complied with the Act, by attaching it to the 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 Tenant was deemed to be served the Notice on January 5, 2015 and the effective date of vacancy on the Notice is automatically corrected to January 15, 2015 pursuant to Section 53 of the Act.

I accept the evidence before me that the Tenant 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 Tenant is 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 Landlords are entitled to an Order of Possession and a Monetary Order.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the Landlords 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 **\$1,600.00** in favor of the Landlords 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 19, 2015

Residential Tenancy Branch

