



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTSEA CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

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 January 21, 2015, the landlord served the tenant with the Notice of Direct Request Proceeding via personal service.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents as of January 21, 2015.

Issue(s) 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;
- A copy of a Residential Tenancy Agreement which was signed by the parties on October 29, 2009, indicating a monthly rent of \$664.00 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 January 5, 2015 with a stated effective vacancy date of January 18, 2015, for \$2,742.00 in unpaid rent (the “10 Day Notice”).

Documentary evidence filed by the landlord indicates that the tenant failed to pay all rent owed and was served the 10 Day Notice by posting on the rental unit door on January 5, 2015. Section 90 of the Act deems the tenant was served on January 8, 2015.

The Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the 10 Day Notice within five days from the date of service.

I note that the 10 Day Notice indicates the sum of \$2,742.00 owing, yet on the landlord's Application for Dispute Resolution, the landlord indicated they sought the sum of \$2,592.00; on the latter, the landlord included details of rent owing in support of their request for a Monetary Order. As the tenant was given notice of the landlord's request for a Monetary Order in the amount of \$2,592.00 when the tenant was served with the Application for Dispute Resolution, I accept this as the amount owing.

Analysis

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

I accept the evidence before me that the tenant has failed to pay all 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 *corrected* effective date of the 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 tenant 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 **\$2,592.00** comprised of rent owed. 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 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: February 05, 2015

Residential Tenancy Branch

