



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 and utilities.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 15, 2015, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail.

Section 90 of the Act determines that a document served in this manner is deemed to have been received five days after service.

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

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid utilities?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding;
- A copy of a residential tenancy agreement which was signed by the parties on July 1, 2014, indicating that the tenant is obligated to pay 60% of the monthly utilities;

- A copy of a residential tenancy agreement which was signed by the parties on July 1, 2014, indicating that the tenant is obligated to pay \$750.00 in rent in advance on the first day of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which the landlord served on the tenant for unpaid rent for the months of August and September in the amount of \$407.00 and in unpaid utilities of \$114.55 due for the period of July and August;
- A copy of the Proof of Service of the Notice to End Tenancy showing that the landlord served the notice to end tenancy on the tenant by registered mail on September 4, 2015. Section 90 of the Act determines that a document served in this manner is deemed to have been received five days after service.

The Notice restates section 46(4) of the Act which provides that the tenant had five days to pay the utility arrears in full or apply for Dispute Resolution. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service and the landlord alleged that the tenant did not pay the utility arrears.

Section 46(6) of the Act states:

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Analysis

I find that the tenant received the notice to end tenancy on September 9, 2015. I accept the landlord's undisputed evidence and I find that the tenant did not pay the rental arrears and did not apply to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I do not accept the landlords claim for utilities. The landlord is required under Section 46(6)(b) to provide the tenant with a demand letter whereby the tenant has thirty days to pay all outstanding utility charges. In the matter before me the landlord has not done that and I therefore dismiss the utilities portion of his monetary claim with leave to reapply. I grant the landlord an order of possession which must be served on the tenant. Should the

tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

I accept the evidence before me that the tenant has failed to pay \$407.00 in rent for the month of September. I find that the landlord is entitled to recover the rental arrears and I grant the landlord a monetary order for \$407.00.

Conclusion

I grant the landlord an order of possession and a monetary order under section 67 for \$407.00. This order may be filed in the Small Claims Division of the Provincial Court 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: September 21, 2015

Residential Tenancy Branch

