



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 an *ex parte* 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 based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 8, 2015, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on October 13, 2015, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 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 Request Proceeding served to the tenant;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on August 9, 2013, indicating a monthly rent of \$1,000.00, due on the first day of the month for a tenancy commencing on August 7, 2013. A term in the agreement indicates the monthly rent will be reduced to \$900.00 as of January 1, 2014;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Monetary Order Worksheet noted that, of the \$900.00 identified as owing in the 10 Day Notice, \$600.00 was paid on September 28, 2015 and \$300.00 was paid on October 2, 2015; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 28, 2015, and personally served to the tenant on September 28, 2015, with a stated effective vacancy date of October 7, 2015, for \$900.00 in unpaid rent that was due on September 1, 2015.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenant at 10:30 am on September 28, 2015. The 10 Day 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.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on September 28, 2015.

I find that the tenant was obligated to pay the reduced monthly rent in the amount of \$900.00, as per the tenancy agreement.

Section 46 (4) of the *Act* states that, within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice.

I find that the fifth day for the tenant to have either paid the rent or disputed the notice is October 3, 2015. The tenant made two payments towards the September rent: \$600.00 on September 28, 2015 and \$300.00 on October 2, 2015. I find that the tenant paid the rent in full within the 5 days permitted under section 46 (4) of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of September 28, 2015, without leave

to reapply. The 10 Day Notice of September 28, 2015 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, I dismiss the landlord's application for a Monetary Order for rent for September 2015 without leave to reapply.

The landlord is free to serve a new 10 Day Notice should the rent remain unpaid for October 2015.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of September 28, 2015 is dismissed, without leave to reapply. The 10 Day Notice of September 28, 2015 is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlord's application for a Monetary Order for rent for the month of September 2015 without leave to reapply.

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: October 15, 2015

Residential Tenancy Branch

