



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

Introduction

The landlord applied for an Order of Possession and a Monetary Order for unpaid rent under the Direct Request Procedure, 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 for each tenant declaring that on January 15, 2016 the landlord served the Notice of Direct Request Proceeding and supporting documents upon each tenant by registered mail sent to the rental unit. The landlord provided registered mail receipts, including tracking numbers, as proof of service. Section 90 of the Act deems a person to have received documents five days after mailing. .

Based on the written submissions of the landlord, I find that the tenants have been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and monetary compensation for unpaid rent or utilities?

Background and Evidence

The landlords submitted copies of the following evidentiary material:

- A residential tenancy agreement which was signed by the parties on February 17, 2015 and February 22, 2015, indicating a monthly rent of \$550.00 due on the 1st day of every month starting March 15, 2015 and that rent does not include electricity;
- A copy of a hydro bill, photographs of hydro meters, a statement of meter readings for the tenants’ unit; and a hand-written “statement” addressed to the tenants on December 2, 2015 indicating they owed \$91.16;

- A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which was issued on January 2, 2016 with a stated effective vacancy date of January 3, 2016, for \$91.16 for unpaid utilities that was demanded in writing on December 2, 2015;
- A Proof of Service of the 10 Day Notice indicating the landlord's agent posted the 10 Day Notice on the tenants' door on January 3, 2016 in the presence of the landlord; and,
- A Monetary Order worksheet indicating the entire amount of \$91.16 remains outstanding as of the date of filing.

The 10 Day Notice states that the tenants had five days to pay the rent and utilities or apply for Dispute Resolution or the tenancy would end. The tenants not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence and I accept that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the door of the rental unit on January 3, 2016. I find the tenants are deemed to have received the 10 Day Notice three days after it was posted on the door, pursuant to section 90 of the Act. I find that the stated effective date on the Notice is incorrect; however, an incorrect effective date does not invalidate a Notice to End Tenancy. Rather, it automatically changes to comply pursuant to section 53 of the Act. Therefore, I find that the effective date of the 10 Day Notice automatically changed to read January 16, 2016.

I accept that despite receiving the 10 Day Notice the tenants failed to pay the outstanding utilities or file to dispute the 10 Day Notice as permitted under section 46(4) of the Act. Accordingly, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy would end on the effective date of the Notice. Therefore, I find that the tenancy ended on January 16, 2016 and the landlord is entitled to an Order of Possession effective two (2) days after service upon the tenants.

Under section 46(6) of the Act, a landlord may treat unpaid utilities as unpaid rent if the landlord has demanded payment of the utilities in writing and the tenants do not pay the amount demanded within 30 days. I accept the evidence before me that the tenants are required to pay for electricity under their tenancy agreement and that the landlord demanded payment of \$91.16 for hydro in writing on December 2, 2015. Since the landlord had the 10 Day Notice posted on January 3, 2016 I accept that the tenants failed to pay the outstanding utilities within 30 days. Therefore, I find the landlord entitled to a Monetary Order in the amount requested of \$91.16.

The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an Order of that court. The security deposit remains in trust to be administered in accordance with the Act.

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenants. The landlord is provided a Monetary Order in the amount of \$91.16 to serve upon the tenants.

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 22, 2016

Residential Tenancy Branch

