



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kenmark Investments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR

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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 18, 2016, 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 5 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?

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 August 1, 2015, indicating that the tenant is obligated to pay \$670.00 in rent in advance on the first day of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") for \$670.00 in unpaid rent due in the month of January;
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice on the tenant by posting the Notice on the door of the rental unit on January 2, 2015;

- A Monetary Order Worksheet showing that the tenant paid her rent for January in 2 payments; and
- 2 rental receipts showing that the tenant paid \$220.00 on January 7 and \$450.00 on January 12, 2016. The receipt dated January 12 notes that the payment is accepted for use and occupancy only.

Section 90 of the Act provides that because the Notice was served by posting, the tenant is deemed to have received the Notice 3 days later on January 5, 2016.

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

Analysis

I find that the tenant was obligated to pay monthly rent in the amount of \$670.00. I accept the evidence before me that the tenant failed to pay the full amount of her rent on January 1, 2016 as was required under the terms of the tenancy agreement. I find that the tenant received the Notice on January 5, 2016. I accept the landlord's undisputed evidence and I find that the tenant did not pay the rental arrears within 5 days of receiving the Notice and when she did pay the arrears, the payment was accepted for use and occupancy only and therefore did not reinstate the tenancy. The tenant also 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 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.

Conclusion

I grant the landlord an order of possession.

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

