



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Advanced Property Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR

Introduction

This matter was conducted 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 29, 2016 at 3:03 p.m. the landlord, N.C., with witness L.F., served the tenant with the Notice of Direct Request Proceeding via posting to the door. The landlord supplied a copy of a proof of service document signed by the witness. The landlord's name is indicated on the document, but the landlord did not sign the proof of service document.

Section 88(g) and 90 of the Act determines that a document may be served by posting to the door and that it is deemed to have been served three days after posting. I find that the landlord has sufficiently served the tenant, in accordance with section 71(2) of the Act, as the witness has confirmed the landlord posted the Notice.

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

Issue(s) 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 Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on October 6, 2015, indicating a monthly rent of \$1,000.00 due the first day of the month; and

- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities which was issued on January 6, 2016 with a stated effective vacancy date of January 16, 2016 (contains a typographical error “206”), for \$1,000.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 day Notice to end tenancy for unpaid rent or utilities by personal delivery on January 6, 2016, at the rental unit at 4:00 p.m. The landlord submitted a copy of a proof of service document signed by the landlord and witness, T.M. confirming service.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,000.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord submitted a copy of a receipt issued for use and occupancy only for payment in the sum of \$1,000.00 made on January 20, 2016.

Analysis

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

The Notice is deemed to have been received by the tenant on January 6, 2016; the date of personal delivery.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant received this Notice on January 6, 2016, I find that the earliest effective date of the Notice was January 16, 2016. I find that a typographical error was included on the Notice, that indicated the year was 206; obviously meaning 2016.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on January 16, 2016, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant had until January 11, 2016 to pay the rent in full.

In the circumstances before me I have no evidence that the tenant exercised either of these rights. The evidence indicates that the tenant paid rent owed on January 20, 2016, not by January 11, 2016. Therefore, pursuant to section 46(5) of the Act, I find

that the tenant is conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice; January 16, 2016.

Therefore, I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of possession effective **two days after service** on the tenant. The Order may be filed in the Supreme Court and enforced as an Order of that Court.

Conclusion

The tenancy ended effective January 16, 2016.

The landlord is entitled to an Order of possession.

This decision is final and binding 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 02, 2016

Residential Tenancy Branch

