



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

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 requesting an Order of possession and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 23, 2016 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service.

Section 90 of the Act determines that a document is deemed to have been served on the 5th day after mailing.

Therefore, based on the written submissions of the landlord, I find that the tenant has been served, pursuant to sections 89 and 90 of the Act, with the Direct Request Proceeding documents effective January 28, 2016.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary Order for unpaid rent and utilities?

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 May 11, 2015, indicating a monthly rent of \$590.00 due on the first day of the month and an addendum requiring the tenant to pay water, gas and hydro costs; and

- A copy of 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 12, 2016, for \$2,450.00 in unpaid rent plus \$274.00 in unpaid utilities.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent and utilities owed and was served the 10 day Notice to end tenancy for unpaid rent or utilities by personal delivery on January 2, 2016 at 10:00 a.m. at the rental unit address. The landlord submitted a proof of service document signed by the tenant, confirming receipt of the Notice.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,450.00 for rent and \$274.00 for utilities 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 supplied a monetary worksheet indicating that since June 2015 the tenant has paid \$500.00 in September 2015 and total rent owed in October and November, 2015. No further rent has been paid, to January 2016, totalling \$2,450.00.

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.

I find pursuant to section 89(1)(b) of the Act that the Notice was received by the tenant on January 2, 2016; the date the tenant signed confirming receipt.

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 2, 2016, I find that the earliest effective date of the Notice is January 12, 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 12, 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 and utilities or to file an Application for Dispute Resolution to dispute the Notice.

In the circumstances before me I have no evidence that the tenant exercised either of these rights in relation to rent; 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 12, 2016.

The application and monetary worksheet completed by the landlord require the applicant to provide proof of written demand given to the tenant requesting payment of utilities. As the landlord did not supply a copy of any written demand I find that the claim for utilities is dismissed with leave to reapply. A Notice ending tenancy is not sufficient written demand; that must be given prior to the Notice being issued, in accordance with section 46(6) of the Act.

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.

I find that the landlord is entitled to monetary compensation, pursuant section 65 of the Act, in the amount of \$2,450.00 for rent owed between July 2015 and January 2016, inclusive. I grant the landlord a monetary an Order in that amount. This Order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession and a monetary Order for unpaid rent.

The claim for unpaid utilities is dismissed with leave to reapply within the legislated time-limit.

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

