



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY
and [tenant name suppressed to protect privacy]

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 February 20, 2017, 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 February 25, 2017, 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 September 23, 2013, indicating a monthly rent of \$1,350.00, due on the first day of the month for a tenancy commencing on October 1, 2013;
- Two copies of Notice of Rent Increase forms showing the rent being increased from \$1,350.00 to the current monthly rent amount of \$1,440.00;
- A Monetary Order Worksheet and ledger showing the rent owing and paid during the relevant portion of this tenancy;
- Two copies of receipts dated January 17, 2017, for \$300.00 of rent and January 23, 2017 for \$515.00 of rent, paid by the tenant, which the landlord has indicated is “for use and occupancy only”; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 17, 2017, and posted to the tenant’s door on January 17, 2017, with a stated effective vacancy date of January 27, 2017, for \$815.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant’s door at 3:05 pm on January 17, 2017. 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 sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on January 20, 2017, three days after its posting.

Section 46(4) (a) of the *Act*, regarding a landlord’s notice for non-payment of rent, states that “within 5 days after receiving a notice under this section, the tenant may pay the overdue rent , in which case the notice has no effect.”

I find that the Monetary Order Worksheet and receipts submitted by the landlord indicate that the tenant has paid the total rent that was owed on the 10 Day Notice on January 23, 2017, within the five day days allowed by 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 January 17, 2017, without leave to reapply. The 10 Day Notice of January 17, 2017 is cancelled and of no force or effect.

For the same reason identified in the 10 Day Notice, I dismiss the landlord's application for a Monetary Order for rent owing for January 2017, without leave to reapply.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of January 17, 2017 is dismissed, without leave to reapply. The 10 Day Notice of January 17, 2017, 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 owing for January 2017, 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: February 27, 2017

Residential Tenancy Branch