



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 2, 2011 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the written submissions of the landlord, I find that the tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent, pursuant to Sections 46 and 55 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on January 29, 2010 for a 1 year fixed term tenancy beginning on February 1, 2010 for the monthly rent of \$855.00 due on the 1st of each month and a security deposit of \$442.50 was paid. The tenancy agreement required the tenant to vacate the rental unit at the end of the fixed term; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on July 4, 2011 with an effective vacancy date of July 14, 2011 due to \$910.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the month of July 2011 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on July 4, 2011 at 3:25 p.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

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 June 7, 2011 and the effective date of the notice is amended to July 17, 2011, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

However, the landlord has submitted a copy of a fixed term tenancy agreement that required the tenant to vacate the rental unit no later than January 31, 2011 and as such, I find that I cannot determine the terms of the current tenancy through the Direct Request process.

The Direct Request process requires all documentary evidence submitted about the tenancy and the landlord's issuance of a 10 Day Notice to End that tenancy must provide a complete picture of the issues because a participatory hearing was not convened for the landlord clarify any issues.

Conclusion

For the reasons above, I dismiss the landlord's Application with 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: August 10, 2011.

Residential Tenancy Branch