



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

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 and a monetary order for unpaid rent and utilities.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 27, 2011, 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 served five days later.

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

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the landlord entitled to a 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 April 1, 2011, indicating a monthly rent of \$1,300.00 due on the first day of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities which was issued on October 13, 2011 with a stated effective vacancy date of October 16, 2011, for \$2,600.00 in unpaid rent and \$704.99 for unpaid utilities.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay all rent and utilities owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities by posting on the door on October 13, 2011. Section 90 of the Act deems the tenant was served on October 16, 2011.

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

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 that after reviewing the landlord's application and the notice to end tenancy that the landlord has made a typographical error on the notice. The notice indicates \$2,600.00 was due on September 1, 2011. I correct that date to be \$2,600.00 was due on October 1, 2011.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Therefore, I find that the landlord is entitled to an order of possession and a monetary order for unpaid rent.

I find that the landlord has not provided sufficient evidence to substantiate the claim for outstanding utilities and I dismissed that claim with leave to reapply.

Conclusion

I find that the landlord is entitled to an order of possession effective **two days after service** on the tenant and this 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 to section 67 in the amount of **\$2,600.00** comprised of rent owed for September 2011, and October 2011.

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.

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: October 31, 2011.

Residential Tenancy Branch