



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

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 based on unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declared that on November 2, 2011, the landlord sent the Notice of Direct Request Proceeding to the tenants by registered mail.

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

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*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on May 31, 2011, indicating a monthly rent of \$895.00 due on the 1st day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenants’ door on October 3, 2011 with a stated effective vacancy date of October 13, 2011, for \$1,290.00 in unpaid rent. In accordance with the *Act*, the effective vacancy date of the 10 Day Notice is corrected to October 16, 2011.

Witnessed documentary evidence filed by the landlord stating that the tenants failed to pay all outstanding rent was served by posting the 10 Day Notice on the tenants’ door at 10:45 a.m. on October 3, 2011. In accordance with section 88 of the *Act*, the tenants were served with this 10 Day Notice on October 6, 2011.

The Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenants 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 tenants have been served with notice to end tenancy as declared by the landlord. The landlord's written evidence stated that the Proof of Service of the Notice of Direct Request document was sent to all three tenants by registered mail on November 2, 2011.

I have also examined the tenant ledger entered into written evidence by the landlord in support of the landlord's application. This ledger confirmed that \$1,290.00 in rent was owing as of October 1, 2011. The tenant ledger also shows that a cash payment of \$895.00 was received from the tenants on October 11, 2011. This amount was the regular monthly rental for this tenancy. The landlord's tenant ledger continued to show \$420.00 in outstanding rent owing as of October 12, 2011. The landlord did not provide any rent receipt or other documentation that would demonstrate that the landlord's acceptance of the regular monthly rental payment from the tenants on October 11, 2011 was not intended to continue this tenancy. If the landlord accepted this payment for rent owing, the landlord may have continued this tenancy. If the landlord accepted this payment for use and occupancy only, the tenancy would not have continued.

The landlord has not supplied sufficient evidence to demonstrate the basis for the landlord's acceptance of the \$895.00 payment from the tenants on October 11, 2011. I find that I am unable to consider in a Direct Request proceeding the landlord's application to end this tenancy for unpaid rent and to obtain an Order of Possession.

Under these circumstances, I adjourn this application to be reconvened as a participatory hearing.

Conclusion

I adjourn the landlords' direct request application for an Order of Possession to be reconvened at a participatory hearing. 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: November 08, 2011

Residential Tenancy Branch