



Dispute Resolution Services

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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 for an Order of Possession and a Monetary Order for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding for each named tenant to declare that on December 22, 2011 the landlord served each named tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit. The landlord provided a Canada Post receipts and tracking numbers as evidence of service. Section 90 of the Act determines that the documents are deemed to have been received five days later.

In the details of dispute the landlord stated that the fourth co-tenant was not served because that co-tenant has moved out of the rental unit.

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

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and monetary compensation for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each named co-tenant, including the registered mail receipts;
- A copy of a residential tenancy agreement which was signed by the parties on October 3 and 4, 2011, indicating a monthly rent of \$1,600.00 due on the 1st day of every month starting October 1, 2011;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 15, 2011 with a stated effective vacancy date of January 31, 2012, for \$1,600.00 in unpaid rent as of December 1, 2011; and,

- A copy of a Proof of Service of the 10 Day Notice indicating the landlord personally served the 10 Day Notice upon one of the co-tenants (referred to by initials LB) at the rental unit on December 15, 2011 at 10:00 a.m. in the presence of a witness.

The 10 Day Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The landlord submitted that on December 2, 2011 the co-tenant LB had informed the landlord she deposited cash for the rent at a RBC. The landlord submitted that as of December 22, 2011 the bank has no record of a deposit from the tenants and the tenants have not provided the landlord with a receipt for a cash deposit.

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 a 10 Day Notice to End Tenancy as declared by the landlord.

I accept the evidence before me that the tenants have failed to pay the rent owed in full or dispute the Notice within 5 days of receiving the Notice as permitted under section 46(4) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy shall end on the effective date of the Notice. Therefore, I find that the tenancy shall end on the stated effective date of January 31, 2012 and the landlord is entitled to an Order of Possession effective that date. To enforce the Order of Possession it must be served upon the tenants.

I find the landlord is entitled to monetary compensation for unpaid rent in the amount of \$1,600.00 for rent due for the month of December 2011 and the landlord is provided a Monetary Order to serve upon the tenants. The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an Order of that court. The security deposit remains in trust to be administered in accordance with the *Act*.

Conclusion

The tenancy shall end and the landlord is provided an Order of Possession effective January 31, 2012. The landlord is provided a Monetary Order in the amount of \$1,600.00 for the rent owed for December 2011 to serve upon the tenants.

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: December 29, 2011.

Residential Tenancy Branch