



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 declares that on August 24, 2012, the landlord handed the tenant the Notice of Direct Request Proceeding.

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 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 for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on July 1, 2012, indicating a monthly rent of \$790.00 due on the first day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) which was issued on August 14, 2012 with a stated effective vacancy date of August 24, 2012, for \$790.00 in unpaid rent.
- A copy of an NSF cheque for the August 2012, returned to the landlord by his bank.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay all rent owed and was served the 10 Day Notice by posting on the door on August 14, 2012. The landlord submitted a written Proof of Service document in which the landlord and a witness attested to the landlord's posting of the 10 Day Notice on the tenant's door at 2:30 p.m. on August 14, 2012. In accordance with sections 89(2) and 90 of the

Act, I find that the tenant was deemed to have been served with the 10 Day Notice on August 17, 2012, the third day after its service.

The 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. 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 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 corrected effective date of the Notice, August 27, 2012. Therefore, I find that the landlord is entitled to an Order of possession for unpaid rent.

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.

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 29, 2012

Residential Tenancy Branch