



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 19, 2012, at 7:45 a.m. the Landlord personally served the Tenant's Adult son, who resides with the Tenant, with the Notice of Direct Request Proceeding. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of the signed residential tenancy agreement for a fixed term tenancy that began on October 1, 2012 and switched to a month to month tenancy after July 31, 2011 for the monthly rent of \$1,450.00 due on 1st of the month and a security deposit of \$725.00 appears to have been paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, September 6, 2012, with an effective vacancy date listed as September 11, 2012, due to \$3,000.00 in unpaid rent that was due on September 01, 2012.
- A tenant ledger which indicates \$3,600 was due as of September 1, 2012.

Documentary evidence filed by the Landlord indicates that the Tenant's Adult son who resides at the rental unit was served the 10 Day Notice to End Tenancy for Unpaid Rent in person on September 6, 2012 at the rental unit.

Analysis

I accept that the Tenant has been served with the 10 Day Notice to end tenancy as declared by the Landlord. The notice was served and deemed received by the Tenant on September 6, 2012, and the effective date of the notice is September 16, 2012, pursuant to section 90 of the *Act*. 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 and I hereby grant the Landlord an Order of Possession.

The 10 Day Notice indicates \$3,000.00 is the amount of unpaid rent as of September 01, 2012, and there are notations on the Notice which indicate \$1450.00 is owed for September 01, 2012, \$1450.00 is past due from October 1, 2011 and \$100.00 is past due from November 2011. The tenant ledger indicates the Tenant paid the October 1, 2011 rent in full on October 4, 2012 and no payments were made towards November 2011 rent.

Upon consideration of the above, I am satisfied that there is sufficient evidence to prove there is outstanding rent owed to the Landlord; however further evidence is required to determine the specific amount due and which month(s) the amounts accumulated. Accordingly I dismiss the Landlord's request for a Monetary Order, with leave to reapply.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord's request for a Monetary Order is HEREBY DISMISSED, 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: September 25, 2012.

Residential Tenancy Branch