

## **DECISION**

### **Dispute Codes**

OPR

### **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 Landlords for an Order of Possession.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 14, 2012, the Landlord served the Tenant with the Notice of Direct Request Proceeding by posting the documents to the door of the rental unit.

Based on the written submissions of the Landlords, I find that the Tenant has been served with the Direct Request Proceeding documents.

### **Issue(s) to be Decided**

Are the Landlords entitled to an Order of possession?

### **Background and Evidence**

The Landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent;
- A copy of a residential tenancy agreement which was signed by the Landlord SS and the Tenant on November 20, 2011, indicating a monthly rent of \$950.00; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 5, 2012, with a stated effective vacancy date of November 14, 2012, for \$950.00 in unpaid rent.

Documentary evidence filed by the Landlords indicates that the rent remains unpaid. The documentary evidence indicates that the Landlord SS served the 10 Day Notice to End Tenancy for Unpaid Rent by posting the document to the Tenant's door on November 5, 2012, at 1:00 p.m. The Proof of Service document is signed by a witness.

The Notice states that the Tenant had five days to pay the rent 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 was served with Notice to End Tenancy as indicated on the Proof of Service. Service in this manner is deemed to be effected 3 days after posting the document.

The Landlord SS is named in the tenancy agreement, but the Landlord PK is not. The Notice to End Tenancy was issued by the Landlord SS, and the proof of service documents identify the Landlord SS as the person who served the Notice of Direct Proceeding and the Notice to End Tenancy upon the Tenant. Therefore, I find insufficient evidence that the Landlord PK is a "landlord", and proceed with the Application with respect to the Landlord SS only.

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*.

Section 53 of the Act provides that an incorrect end of tenancy date on a Notice to End Tenancy is deemed to be changed to the date that complies with the applicable Section. 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 November 18, 2012. Therefore, I find that the Landlord SS is entitled to an Order of Possession.

## Conclusion

Pursuant to the provisions of Section 55 of the Act, I hereby provide the Landlord SS an Order of Possession effective **two days after service** of the Order upon the Tenant. 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: November 19, 2012.

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Residential Tenancy Branch