

## **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.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 21, 2012, the Landlord's agent served each of the Tenants with the Notice of Direct Request Proceeding as follows: by handing the documents to the Tenant KD at the rental unit; and by mailing the documents, by registered mail, to the Tenant PD. The Landlord provided a copy of the registered mail receipt in evidence.

Based on the written submissions of the Landlord, I find that the Tenant PD was served with the Direct Request Proceeding documents on December 21, 2012, and that the Tenant KD was duly served on December 26, 2012, pursuant to the provisions of Section 90 of the Act.

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

Is the Landlord entitled to an Order of possession?

Is the Landlord entitled to 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 of the Tenants;
- 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 parties on February 17, 2012, indicating a monthly rent of \$1,300.00 due on the first day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 3, 2012, with a stated effective vacancy date of December 14, 2012, for \$1,300.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the rent remains unpaid. The documentary evidence indicates that the Landlord's agent served the 10 Day Notice to End Tenancy for Unpaid Rent by posting the document to the Tenants' door on December 3, 2012, at 11:15 a.m. The Proof of Service document is signed by a witness.

The Notice states that the Tenants 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 Tenants were served with Notice to End Tenancy on December 3, 2012. Section 90 of the Act provides that service in this manner is deemed to be effective 3 days after posting.

I accept the evidence before me that the Tenants have 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 Tenants are conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on December 16, 2012.

Therefore, I find that the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent in the amount of **\$1,300.00**.

### **Conclusion**

Pursuant to the provisions of Section 55 of the Act, I hereby provide the Landlord an Order of Possession effective **two days after service** of the Order upon the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Pursuant to the provisions of Section 67 of the Act, I hereby provide the Landlord a Monetary Order in the amount of **\$1,300.00** for service upon the Tenants. This Order may be filed in the Provincial Court (Small Claims) 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: December 28, 2012.

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Residential Tenancy Branch