



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.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding on the Tenant. Documentary evidence indicates that on the Landlord served the Notice of Direct Request Proceeding by hand delivering the document to an adult person living at the rental unit on April 10, 2013, at 2:00 p.m.

Section 89 of the Act provides the methods of service for an application for an Order of Possession and a Monetary Order. Section 89 states:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;

(b) by sending a copy by registered mail to the address at which the tenant resides;

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(3) A notice under section 94.21 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

In other words, a landlord must serve a tenant with the Notice of Direct Request in accordance with the provisions of Section 89(2) for the purpose of requesting an Order of Possession, and must serve a tenant with the Notice of Direct Request in accordance with the provisions of Section 89(1) for the purpose of requesting a Monetary Order.

I find that the Notice of Direct Request was duly served for the purposes of requesting an Order of Possession, but not for the purposes of requesting a Monetary Order. Therefore, the Landlord's application for a Monetary Order is dismissed **with leave to reapply**.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord submitted the following relevant evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding;
- A copy of the Proof of Service of the Notice to End Tenancy;
- A copy of a residential tenancy agreement which was signed by the parties on July 19, 2011, indicating a monthly rent of \$850.00, due on the first day of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 4, 2013, with an effective vacancy date of April 14, 2013, for \$850.00 in unpaid rent that was due on April 1, 2013.

The Landlord's Application for Dispute Resolution indicates that the Tenant has not paid the outstanding rent.

The Landlord's documentary evidence indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by handing the document to the Tenant at 7:00 p.m. on April 4, 2013. The Proof of Service document was 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 on April 1, 2013. I accept the evidence before me that the Tenant 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 ends on April 14, 2013.

Therefore, I find that the Landlord is entitled to an Order of Possession effective April 14, 2013.

Conclusion

Pursuant to the provisions of Section 55 of the *Act*, I hereby provide the Landlord with an Order of Possession effective **1:00 p.m., April 14, 2013**. This Order must be served upon the Tenant in accordance with the provisions of Section 88 of the *Act* and may be filed in the Supreme Court and enforced as an Order of that Court.

The Landlord's application for a Monetary Order for unpaid rent is **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: April 11, 2013



A. Holmes, Arbitrator
Residential Tenancy Branch

