



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

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 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 July 24, 2013, the landlord served the tenant (JS) with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find the tenant (JS) has been duly served with the Direct Request Proceeding documents.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 24, 2013, the landlord served the tenant (KB) with the Notice of Direct Request Proceeding via personal service. I find the tenant (KB) has been duly served with the Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the landlord are entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 46, 55 and 67 of the Act.

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 tenants;
- A copy of a residential tenancy agreement which was signed by the tenant (KB) on February 1, 2013, indicating a monthly rent of \$895.00 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 July 3, 2013, with a stated effective vacancy date of July 13, 2013, for \$1,055.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants had failed to pay all rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by, posting on the door on July 3, 2013. Section 90 of the Act deems the tenants were served on July 6, 2013, which would automatically correct the above effective vacancy date to July 16, 2013.

The Notice states that the tenants 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 tenants 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 have been served with notice to end tenancy as declared by the landlords.

In this case, the landlord has provided a tenancy agreement; however, that agreement is not signed by the respondent (JS). As a result, I decline to make any orders against the respondent (JS) as landlord has not provided sufficient evidence that he is a tenant under the tenancy agreement.

However, I accept the evidence before me that the tenant (KB) has failed to pay all 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. Therefore, I find that the landlord is entitled to an Order of possession.

The landlord is seeking a monetary, however, the direct request process is a mechanism that allows the landlord to apply for an expedited decision; there can be no omissions or deficiencies with items being left open to interpretation or inference.

While I am satisfied the tenant has failed to pay the full amount of rent owed, I find the landlord has provided insufficient evidence with respect to how much rent is owed. As the notice to end tenancy indicated that the tenant owed \$1,055.00 in unpaid rent as of July 1, 2013. The detail of the landlord's application does not indicate there was rent arrears owing prior to July 1, 2013. The tenancy agreement indicated rent is \$895.00 per month.

The landlord writes in their application that they are seeking a monetary order in the amount of \$185.00. However, the landlord has not provided any details of any payments made by the tenant and I cannot determine how they arrive at the amount of \$185.00,

as no rent ledger was provided as evidence. As a result, I dismiss the landlord's application for a monetary order with leave to reapply.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The landlord's application for a monetary order 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: July 31, 2013

Residential Tenancy Branch

