Dispute Resolution Services

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 November 20, 2013, the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the written submissions of the Landlord, I find that the Tenant is deemed served with the Dispute Resolution Direct Request Proceeding documents on November 25, 2013, five days after they were mailed in accordance with Section 90 of the Act.

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 a residential tenancy agreement which was signed by all parties for a fixed term tenancy that began on September 21, 2012 and switched to a month to month tenancy after September 30, 2013. The monthly rent of $1,200.00 is due on 1st of the month;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, November 5, 2013, with an effective vacancy date listed as November 15, 2013, due to $1,200.00 in unpaid rent that was due on November 1, 2013; and

- A notation on the application which indicates the Tenant paid $600.00 of the amount owed, leaving a balance due of $600.00.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on November 8, 2013 by registered mail. Canada Post receipts were provided in the Landlord's evidence.

Analysis

Order of Possession - I have reviewed all documentary evidence and accept that the Tenant has been served with notice to end tenancy as declared by the Landlord. The notice is deemed received by the Tenant on November 13, 2013, five days after it was mailed, and the effective date of the notice is November 23, 2013, 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.

Monetary Order – The evidence supports that the Tenant has failed to pay the full amount owing for November 1, 2013 rent and has a balance due of $600.00. Not paying the rent in accordance with the tenancy agreement is a violation of section 26 of the Act which provides that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order for **$600.00.**

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

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 decision will be accompanied by a Monetary Order for **$600.00**. This Order is legally binding and must be served upon the Tenant.

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 26, 2013

_____
Residential Tenancy Branch