



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 deals with an Application for Dispute Resolution by the Landlord for:

1. An Order of Possession – Section 55; and
2. A Monetary Order for unpaid rent – Section 67.

Given the Landlord's signed proof of service, I find that the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail on April 17, 2014 in accordance with the Act.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

In the Application made April 17, 2014 the Landlord submits that the Tenant provided the Landlord with an NSF Cheque for April 2014 rent of \$1,350.00 and provides the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding;
- A copy of a residential tenancy agreement signed by the Parties indicating a tenancy start date of December 1, 2013 and a monthly rent of \$1,350.00 due on the first day of the month;

- A copy of a 10 day notice to end tenancy for unpaid rent (the “Notice”) issued on April 1, 2014 with a stated effective vacancy date of April 11, 2014 for \$1,350.00 in unpaid rent; and
- A proof of service of the Notice showing that the Landlord served the Notice to the Tenant in person on April 1, 2014;

The Tenant did not make an application to dispute the Notice.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant a notice to end tenancy. Section 5 of the Act provides that a landlord may not avoid the Act and that any attempt to do so has no effect. As the Landlord gave a notice to end the tenancy on the same day that rent is due under the tenancy agreement, I find that the Landlord avoided the Act’s requirement in ending the tenancy and that the notice to end tenancy is of no effect. I therefore dismiss the Landlord’s application with leave to reapply.

Conclusion

The application 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 29, 2014

Residential Tenancy Branch

