



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 14, 2014 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service.

Section 90 of the Act determines that a document is deemed to have been served on the 5th day after mailing.

Therefore, based on the written submissions of the landlord, I find that the tenant has been served, pursuant to sections 89 and 90 of the Act, with the Direct Request Proceeding documents.

Preliminary Matters

The landlord submitted a corrected application, removing a request made for monetary compensation.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Background and Evidence

The landlord submitted the following evidentiary material:

- 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 the parties on March 22, 2012, indicating monthly rent of \$775.00 due each month, with the 1st

payment due April 1, 2011 of the month. The tenancy agreement indicates that the tenancy commenced on April 1, 2012;

- Copies of dated Notices to end tenancy; and
- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities which was issued on April 10, 2014 with a stated effective vacancy date of April 20, 2014, for \$725.00 in unpaid rent due April 1, 2014.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was personally served the 10 day Notice to end tenancy for unpaid rent or utilities on April 10, 2014 at 12:10 p.m., at the rental unit. The landlord supplied a proof of service document, signed by the tenant, acknowledging receipt of the Notice.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$725.00 within 5 days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant files an Application for Dispute Resolution within 5 days.

The Notice also indicated \$1,995.00 in other past rent was due.

There was no evidence before me that the tenant has paid the rent or disputed the Notice.

Analysis

I am satisfied that the tenancy commenced on April 1, 2012 and that the initial date rent was due included a clerical error, showing rent due in 2011 rather than 2012. From the evidence before me I find that rent was due on the 1st day of each month. The tenancy agreement indicated that the initial rent payment was due on the 1st day of the month.

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, in accordance with section 90 of the Act, to have been received by the tenant on the day of personal delivery, when the tenant signed confirming receipt; April 10, 2014.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on April 10, 2014, I find that the earliest effective date of the Notice is April 20, 2014.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on April 20, 2014, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice.

In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant is conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice; April 20, 2014.

Therefore, I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of possession effective **two days after service** on the tenant. The Order may be filed in the Supreme Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession.

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: May 29, 2014

Residential Tenancy Branch

