



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Southview Property Management Inc.
and [tenant name suppressed to protect privacy]

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 which declares that on August 30, 2014 at 6 p.m., at the rental unit address, the landlord personally served tenant H.Y. with the Notice of Direct Request Proceeding.

A 2nd signed Proof of service of the Notice of Direct Request Proceeding declares that on August 31, 2014 the landlord served tenant W.Z. 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 day of personal delivery and on the 5th day after mailing.

Therefore, based on the written submissions of the landlord, I find that tenant H.Y was served with the Direct Request Proceeding documents, on August 30, 2014 and that tenant W.Z. was served effective September 5, 2014; in accordance with sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary Order for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each tenant;
- A copy of a residential tenancy agreement which was signed by the parties in February 2014, indicating a monthly rent of \$1,550.00 due on the 1st day of the month; and
- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities which was issued on August 13, 2014 with a stated effective vacancy date of August 24, 2014, for \$2,200.00 in unpaid rent due August 1, 2014.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and were served the 10 day Notice to end tenancy for unpaid rent or utilities by personal delivery to tenant H.Y. on August 13, 2014, at the rental unit, with a witness present. The time of service was not provided. The landlord provided a proof of service document signed by witness T.F., stating she saw landlord J.L. personally serve the tenant.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,200.00 within 5 days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within 5 days.

The landlord has claimed unpaid July 2014 rent in the sum of \$650.00 and \$1,550.00 in unpaid August 2014 rent.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord.

Section 90 of the Act stipulates that a document given personally is deemed served on the day of personal delivery. Therefore, I find that the tenants received the Notice to end tenancy on August 13, 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 tenants are deemed to have received this Notice on August 13, 2014, I find that the earliest effective date of the Notice is August 23, 2014.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on August 24, 2014; the date indicated on the Notice, 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 tenants exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenants are conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice; August 24, 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 tenants. The Order may be filed in the Supreme Court and enforced as an Order of that Court.

In the absence of evidence indicating that the balance of July 2014 rent and August rent has been paid, I find that the landlord is entitled to monetary compensation, pursuant section 65 of the Act, in the amount of \$2,200.00 for July and August 2010 rent owed and I grant an Order in that amount. This Order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession and a monetary Order for unpaid rent.

This decision is final and binding and 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: September 29, 2014

Residential Tenancy Branch

