



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 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 September 23, 2014, the landlord served the tenants with the notice of direct request proceeding via personal service at the rental unit address at 7:50 p.m., which was witnessed by third party K.B.

Based on the written submissions of the landlord, I find that the tenants have been duly served with the direct request proceeding documents as of September 23, 2014.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a 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 the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on April 9, 2014, indicating a monthly rent of \$1,200.00 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 September 8, 2014, with a stated effective vacancy date of September 8, 2014, for \$680.00 in unpaid rent due September 1, 2014.

Documentary evidence filed by the landlord indicates that the tenants had failed to pay the full amount of rent owed and was served the 10 day notice to end tenancy for unpaid rent by posting to the tenant's door on September 8, 2014, which was witnessed by third party K.B. Section 90 of the *Act* deems the tenants were served three days later on September 11, 2014 which would correct the above-mentioned effective vacancy date to September 21, 2014 automatically under section 53 of the *Act*.

The notice states that the tenants had five days to pay the rent in full or apply for dispute resolution or the tenancy would end 10 days from the service date. The tenants did not apply to dispute the notice to end tenancy within five days from the date of service.

The landlord writes that of the \$1,200.00 monthly rent due September 1, 2014, the tenants paid \$520.00 on September 4, 2014, and after being served the 10 Day Notice, paid \$600.00 more of the rent owing on September 20, 2014, well after the five day timeline provided for under section 46 of the *Act*. The landlord also writes that the tenants continue to owe \$80.00 of September 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.

I accept the evidence before me that the tenants have 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 tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the notice, September 21, 2014. Therefore, I find that the landlord is entitled to an order of possession and a monetary order for unpaid rent.

Conclusion

I find that the landlord is entitled to an order of possession effective **two (2) days after service** on the tenants and this order may be filed in the Supreme Court and enforced as an order of that court.

I find that the landlord is entitled to monetary compensation pursuant to section 67 in the amount of **\$80.00** comprised of rent owed.

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.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: October 2, 2014

Residential Tenancy Branch

