



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter was conducted in response to a Landlord's Application for Direct Request for an Order of Possession and a Monetary Order for unpaid rent, pursuant to Section 55(4) of the *Residential Tenancy Act* (the "Act").

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that the Tenants were served with the Notice of Direct Request documents by attaching them to the Tenants' door on December 9, 2014 with a witness.

With regards to the Landlord's application for a **Monetary Order** for unpaid rent, Section 89(1) of the Act does **not** allow a Notice of Direct Request Proceeding to be served to a Tenant by posting it to the door. As the Landlord has failed to serve the Notice of Direct Request to the Tenants in accordance with Section 89(1) of the Act, I dismiss the monetary portion of the Landlord's application **with** leave to reapply. However, in relation to the Landlord's application for an Order of Possession, Section 89(2) (d) of the Act does allow a Landlord to serve the Notice of Direct Request by posting it to the Tenant's door. Section 90(c) of the Act provides that a document served in this manner is deemed to have been received three days later. Based on this, I find that the Tenants were served with the Notice of Direct Request Proceeding only in relation to the Landlord's application requesting an Order of Possession and are deemed to have received this on December 12, 2014.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a tenancy agreement signed by the Tenants and the Landlord for a tenancy commencing on August 1, 2014. Rent under the agreement is payable by the Tenants in the amount of \$875.00 on the first day of each month;

- A copy of the two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on November 24, 2014 with an effective vacancy date of December 4, 2014 for \$875.00 in unpaid rent due on November 1, 2014;
- A copy of the Proof of Service of the Notice which declares that the Notice was served on November 24, 2014 by attaching it to the Tenants' door with a witness who signed the document to verify this method of service; and
- The Landlord's Application for Direct Request made on December 5, 2014 claiming \$875.00 in unpaid rent for November, 2014.

Analysis

I have reviewed the evidence and I accept that the Landlord served the Tenants with a Notice that complied with the Act, by attaching it to the Tenants' door with a witness on November 24, 2014. Pursuant to Section 90(c) of the Act, I find that the Tenants were deemed to be served the Notice on November 27, 2014 and the date of vacancy on the Notice is automatically corrected to December 7, 2014 pursuant to Section 53 of the Act.

I accept the evidence that the Tenants failed to dispute the Notice or pay the outstanding rent on the Notice within the five days provided under Section 46(4) of the Act. Therefore, 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 vacancy date of the Notice. As a result, the Landlord is entitled to an Order of Possession for unpaid rent.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the Landlord effective **2 days after service on the Tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court. The Landlord's claim for unpaid rent is dismissed **with** leave to re-apply.

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: December 13, 2014

Residential Tenancy Branch

