



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This matter proceeded by way of an *ex parte* 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 based on unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 29, 2017, the landlord posted the Notice of Direct Request Proceeding to the door of the rental unit. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submissions of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on September 1, 2017, the third day after their posting.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on November 29, 2016, indicating a monthly rent of \$450.00, due on the first day of each month for a tenancy commencing on December 1, 2016;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Monetary Order Worksheet noted that \$450.00 of the \$450.00 identified as owing in the 10 Day Notice was paid on August 23, 2017;

- A copy of a receipt dated August 23, 2017, for \$450.00 of rent, paid by the tenant, which the landlord has indicated is “for use and occupancy only”; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 15, 2017, with a stated effective vacancy date of August 25, 2017, for \$450.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant’s door at 2:30 pm on August 15, 2017. The 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on August 18, 2017, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$450.00, as per the tenancy agreement.

Section 46(4) (a) of the *Act*, regarding a landlord’s notice for non-payment of rent, states that “within 5 days after receiving a notice under this section, the tenant may pay the overdue rent , in which case the notice has no effect.”

I find that the last day the tenant had to either pay the rent or dispute the 10 Day Notice was August 23, 2017.

I further find that the Monetary Order Worksheet and receipt submitted by the landlord indicate that the tenant has paid the total rent that was owed on the 10 Day Notice on August 23, 2017, within the five day days allowed by the *Act*.

Therefore, I dismiss the landlord’s application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of August 15, 2017, without leave to reapply.

The 10 Day Notice of August 15, 2017 is cancelled and of no force or effect.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of August 15, 2017 is dismissed, without leave to reapply.

The 10 Day Notice of August 15, 2017, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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: September 05, 2017

Residential Tenancy Branch