



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR, FF

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 October 17, 2009 the landlord personally served the each tenant with the Notice of Direct Request Proceeding at 12 noon at the rental unit.

Section 90 of the Act determines that a document is deemed to have been served on the day of personal service.

Based on the written submissions of the landlord, I find that the tenants have been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the Act.

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 on May 8, 2009, indicating a monthly rent of \$900.00 due on or before the first day of the month and that a deposit of \$450.00 was paid on May 8, 2009; and

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- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 22, 2009 with a stated effective vacancy date which is not indicated on the notice, for \$900.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant's have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door of the rental unit on September 22, 2009 at 6:00 pm with a witness present. The Act deems the tenants were served on the third day after posting; September 27, 2009.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant's did not apply to dispute the Notice to End Tenancy within five days from the date of service.

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.

The notice is deemed to have been received by the tenants on September 27, 2009. However, section 52 of the Act provides:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) **state the effective date of the notice,**

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

(Emphasis added)

As the Notice does not include an effective date I find that the Notice is not effective and is of no force or effect.



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Therefore, I find that the landlord's Application for Dispute Resolution requesting an Order of possession, a monetary Order for unpaid rent, and the application fee cost is dismissed with leave to reapply.

Conclusion

As the Notice to End tenancy issued on September 22, 2009 does not include an effective vacancy date this Application for Dispute Resolution is dismissed with leave to reapply. The Notice to End Tenancy is of no force or effect.

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: October 30, 2009.

Dispute Resolution Officer