



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 December 23, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding via personal service at the rental unit address at 10:15 a.m. Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

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

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to filing fee costs?

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 tenant;
- A copy of a residential tenancy agreement which was signed by the parties on March 16, 2009, indicating a monthly rent of \$1,090.00 due on the first day of the month and that a deposit of \$545.00 was paid on March 16, 2009;

- A copy of a Caution Notice to Tenant form dated October 18, 2009 in relation to unpaid rent owed; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 26, 2009 with a stated effective vacancy date of December 6, 2009, for \$2,985.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting to the tenant's door on December 3, 2009. The landlord Application indicates that posting to the door was the method of service on December 3, 2009. The landlord also submitted a Certificate of Service for 10 Day Notice form, which is signed by the landlord's agent indicating that the Notice to End Tenancy was served at 6:00 p.m. by posting to the tenant's door on October 21, 2009, with a witness present.

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 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 am unable to determine when the tenant was serviced with the Notice to End Tenancy. The Application for Dispute Resolution indicates that the tenant was served on December 3, 2009 and the Certificate of Service for 10 Day Notice form submitted as evidence indicates that the tenant was served on October 21, 2009; a date which precedes the Notice to End Tenancy issue date.

The landlord has claimed an amount of rent arrears that does not equal three months rent. The landlord did not supply any financial statement detailing payments that may have been made by the tenant.

Therefore, I find that this matter must be reconvened to a participatory hearing in order to establish the date of service of the Notice to End Tenancy issued on November 26, 2009 and the details of unpaid rent.

Conclusion

Having found that the landlord has failed to prove service of the 10 day Notice to End Tenancy, I order that the direct request proceeding be reconvened in accordance with section 74 of the Act. Based on the foregoing, I find that a conference call hearing is required in order to determine the details of service of the 10 Day Notice to End Tenancy and any unpaid rent. **Notices of Reconvened Hearing are enclosed with**

this decision for the applicant to serve upon the tenant within three (3) days of receiving this decision in accordance with section 88 of 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: January 12, 2010.

Dispute Resolution Officer