



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR, MNSD, 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 January 13, 2010 the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided Canada Post receipts and tracking numbers as evidence of service. The landlord submitted proof of service documents which indicated the service address used for each tenant; the receipts each had a notation indicating the tenant name and postal code. Section 90 of the Act determines that a document is deemed to have been served on the fifth day after mailing.

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

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 each tenant;

- A copy of a residential tenancy agreement which was signed by the parties on September 6, 2009, indicating a monthly rent of \$1,250.00 due on the first day of the month and that a deposit of \$625.00 was to be paid on September 15, 2009;
- A copy of a rent payment summary to January 2010, a January 2, 2010 letter to the tenants regarding repeated late rent payments and rent arrears, a note from the female tenant indicating that the cheque for September rent owed and the deposit should not be cashed due to NSF and a returned NSF cheque issued on December 11, 2009 in the sum of \$500.00 for rent; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 4, 2010 with a stated effective vacancy date of January 15, 2010, for \$2,315.00 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 personal delivery to an adult who apparently resides with the tenants.

The Notice states that the tenants 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.

The landlord's rent payment summary submitted as evidence indicates that since September 2009 the tenants owed \$5,620.00 rent and to January 2010 have paid \$3,310.00; resulting in arrears in the sum of \$2,315.00.

Analysis

I have reviewed all documentary evidence in relation to service of the 10 Day Notice to End Tenancy for Unpaid Rent. The landlord submitted a certificate of service indicating that the tenants were served a copy of the 10 Day Notice to End Tenancy via an adult who lived with the tenants. The certificate of service submitted as evidence does not indicate who this adult person was, if this person was male or female or any other information as to how the landlord knew this person lived with the tenants. Therefore, in the absence of any identifying factors of the adult who was served or any evidence that supports the landlord's certificate stating this person lived with the tenants, I find that that this application must be reconvened to a participatory hearing.

Conclusion

Having found that the landlord has failed to provide any evidence identifying the adult person who was served with the 10 Day Notice to End Tenancy for Unpaid Rent issued

on January 4, 2010, 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. 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 21, 2010.

Dispute Resolution Officer