



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR

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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that at 3:24 p.m. on January 18, 2010, at the rental unit, the landlord personally served the female tenant with the Notice of Direct Request Proceeding. The landlord submitted a second Proof of Service of the Notice of Direct Request Proceeding which declares that at 3:59 p.m. on January 18, 2010, the landlord served the male tenant by registered mail sent to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service to the male tenant. Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery and on the fifth day after mailing.

Based on the written submissions of the landlord, I find that both tenants have been served with the Direct Request Proceeding documents by January 23, 2010.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

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 July 23 and July 28, 2009, indicating a monthly rent of \$850.00 due on the first day of the month and that a deposit of \$425.00 was paid on July 23, 2009; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 5, 2010 with a stated effective vacancy date of January 15, 2010, for \$850.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery to the female tenant's sister on January 6, 2010. The Proof of Service document submitted as evidence indicates that the name of the person served differs from the signature provided, acknowledging service of the Notice.

Analysis

I have reviewed all documentary evidence and find that the landlord has served the sister of the female tenant with the 10 Day Notice to End Tenancy for Unpaid Rent. I am unable to determine if the tenant's sister is an adult who apparently resides with tenants; as provided by the service requirements of section 88 of the Act. I am also unable to determine if the person served with the Notice is the same person who signed the Proof of Service document, acknowledging receipt of the Notice.

Further, I note that the Application for Dispute Resolution includes a spelling of the female tenant's name which differs from that included on the tenancy agreement.

Therefore, in the absence of information detailing the status of the female who was served the Notice to End Tenancy and the discrepancy in spelling of the female tenant's name, I find that this Direct Request proceeding must be reconvened to a participatory hearing.

Conclusion

Having found that the landlord has included a name on the Application for Dispute Resolution which differs from that indicated on the residential tenancy agreement; combined with a lack of detailed information related to the individual who was served with the Notice to End Tenancy issued on January 5, 2010, I order that this 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 correct spelling of the female tenant's name and 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 26, 2010.

Dispute Resolution Officer