



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted documentary evidence that states the landlord's agent served a relative of the tenant with the notice of Direct Request Proceeding on August 28, 2010 at 5:24 p.m.

Section 89 requires that a landlord serves an application for dispute resolution to the tenant by leaving a copy with the person, sending it by registered mail to the address at which the person resides or a forwarding address provided by the tenant. The Section goes on to say that if the application is for an order of possession under section 55 it may also be left with an adult who apparently resides with the tenant or attaching it to a door where the tenant resides.

As part of this application is for an order of possession, the landlord must provide evidence that service of this notice of Direct Request Proceeding was served to an adult who apparently resides with the tenant. The landlord failed to identify the age or if the person it was served to lives with the tenant, as such has failed to meet these service requirements.

As to the monetary order sought the landlord did not have the option of serving through an adult who apparently resides there but it must be served directly to the tenant or via registered mail to the tenant. As such, the landlord has failed to provide evidence of service to the tenant regarding the monetary issues.

In addition, the landlord has made an application for one tenant and then "and any tenants at this location". The named tenant is different than the name of the tenant on the tenancy agreement and as the monetary component of the application requires service to each tenant and if there are tenants other than the named tenant the landlord must list their names.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to sections 46, 55, 67, and 72 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 parties on November 1, 2007 for a month to month tenancy beginning on November 1, 2007 for the monthly rent of \$650.00 due on the 1st of the month and a security deposit of \$325.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 5, 2010 with an effective vacancy date of August 14, 2010 due to \$5,850.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the months of December 2009, January, February, March, April, May, June, July, and August 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent personally on August 5, 2010.

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.

Analysis

As noted above, I find the landlord has failed to properly identify the parties to this dispute and failed to provide evidence of service of the notice of these proceedings in accordance with the *Act*.

To be successful in application to claim a loss or damage from a tenant the landlord must provide evidence to support the following four points:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. The steps taken to mitigate any damage or loss, as required under Section 7 of the *Act*.

The landlord has failed to submit any evidence to show how they mitigated any loss or damage they may have suffered. The landlord has failed to provide evidence of what

has transpired over the course of the 9 months that rent has not been paid and any attempts the landlord may have made to end the tenancy or collect rent.

Conclusion

For the reasons noted above, I dismiss the landlord's application in its entirety with leave to reapply.

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 14, 2010.

Dispute Resolution Officer