



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) 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.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 16, 2010 the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that the Landlord mailed a package to the rental unit. Section 90 of the *Act* determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is September 21, 2010.

Based on the written submissions of the Landlord, I find the Tenant has been served with the Dispute Resolution 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 and to a monetary Order for unpaid rent, pursuant to sections 55 and 67 of the *Act*.

Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant.
- A copy of a residential tenancy agreement between the Landlord and the Tenant, which appears to be signed by the Tenant, that indicates that the tenancy began on August 01, 2010 and that the Tenant was required to pay rent of \$1000.00. The date that rent is due is not specified in the tenancy agreement.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by the Landlord on September 03, 2010, which declares that the Tenant has failed to pay rent in the amount of \$825.00 that was due on September 01, 2010. The Notice does not specify when the rental unit must be vacated, which is commonly referred to as the effective date of the Notice.
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy in which the Landlord declared that he posted the Notice on the Tenant's door on September 03, 2010 at 1815 hours, in the presence of a male, who also signed the Proof of Service.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was posted on the door on September 03, 2010 and that the Tenant owes rent of \$825.00 for September.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$1,000.00. The tenancy agreement does not establish the date that rent is due. I therefore have insufficient evidence to conclude that the parties agreed that rent was due on the first day of the month as opposed to the last day of the month.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the rent is due by giving a notice to end tenancy. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was posted at the rental unit on September 03, 2010.

Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(c) of the *Act* stipulates that to be effective a notice to end tenancy must state the effective date of the notice. The Notice to End Tenancy that was posted at the rental unit does not specify the effective date of the Notice. Even if the Landlord was able to establish that rent was overdue by the time the Notice has been posted at the rental unit, I would find that the Notice was not effective, as the Landlord did not comply with section 52(c) of the *Act*.

Conclusion

As I am unable to conclude that rent for September is currently due, I dismiss the Landlord's application for compensation for rent from September, with leave to reapply if the rent is not paid by the end of September.

As I have determined that the Notice to End Tenancy is of no force and effect as it does not comply with section 52(c) of the *Act*, I dismiss the Landlord's application for an Order of Possession.

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 27, 2010.

Dispute Resolution Officer