



Dispute Resolution Services

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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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 17, 2010 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the written submissions of the landlord, I find that 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 46, 55, 67, and 72 of the *Act*.

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 June 25, 2010 for a 6 month fixed term tenancy beginning on July 1, 2010 for the monthly rent of \$780.00 due on the 1st of the month and a security deposit of \$390.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 10, 2010 with an effective vacancy date of September 20, 2010 due to \$645.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of September 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was left with a friend of the tenant on the residential property on September 10, 2010 at 6:45 p.m..

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

Section 88 of the *Act* outlines the methods that a party can serve documents, other than dispute resolution documents, to the other party. The section specifically states a document that is required under the *Act* to be given or served on a person must be given or served by:

- a) Leaving a copy with the person;
- b) If the person is a landlord, by leaving a copy with an agent of the landlord;
- c) Sending a copy by ordinary or registered mail to the address at which the person resides;
- d) Sending a copy by ordinary or registered mail to a forwarding address provided by the tenant;
- e) Leaving a copy at the person's residence with an adult who apparently resides with the person;
- f) Leaving a copy in a mailbox or mail slot for the address at which the person resides;
- g) Attaching a copy to a door or other conspicuous place at the address at which the person resides; or
- h) Transmitting a copy to a fax number provided as an address for service by the person to be served.

While the tenant's rental unit is a part of the residential property, identification of where on the residential property the notice was served was not provided in the landlord's submission. In addition the landlord has failed to provide any evidence of whether or not the tenant's friend is an adult or resides with him.

As such, I find the landlord has failed to provide sufficient evidence that the Notice to End the Tenancy was served in accordance with Section 88 of the *Act*.

Conclusion

Base on my findings above, I dismiss the landlord's application 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 28, 2010.

Dispute Resolution Officer