



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes – OPR, MNR, OPB

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 at 6:30 p.m. the landlord served the tenant and occupant with the Notice of Direct Request Proceeding by posting the Notice on the door of the rental unit.

Section 89 of the *Act* allows a landlord who has applied for an order of possession to serve notice of the application and direct request by posting it on the door of the rental unit. As such, I accept the tenant and occupant have been served in accordance with the *Act* relating to the order of possession.

However, Section 89 also indicates that for matters other than an order of possession the landlord must serve the tenants by leaving a copy with the person; sending a copy by registered mail to the address at which the person resides or to a forwarding address provided by the tenant. As the landlord has confirmed that the notice of this proceeding was not served using any of these methods, I find the tenants have not been served in accordance with the *Act* for the purposes of the monetary order.

I also note the landlord has applied for an order of possession as the tenant has breached an agreement with the landlord. As the Direct Request Process is set up to only deal with matters related to 10 Day Notices to End a Tenancy for Unpaid Rent or Utilities, I find this part of the landlord's application cannot be considered through the Direct Request Process.

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 38, 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 and occupant;
- A copy of a residential tenancy agreement which was signed by the parties on July 7, 2010 for a month to month tenancy beginning on June 6, 2010 for the monthly rent of \$1,000.00 due on the 1st of the month and a security deposit of \$500.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 16, 2010 with an effective vacancy date of August 26, 2010 due to \$1,000.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of August 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served to the male occupant on August 16, 2010 at 5:00 p.m. and that this service was witnessed by a third party.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The landlord provided documentation stating that on August 16, 2010 the tenant paid \$750.00. The tenant did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on August 16, 2010 and the effective date of the notice is August 26, 2010. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

However, as the tenant was not served with notice of this proceeding in accordance with the *Act* I dismiss the monetary portion of the landlord's application against the tenant with leave to reapply. As the named male occupant is not a party to the tenancy agreement, I dismiss the monetary portion of the landlord's application against the occupant without leave to reapply.

Finally, as the Direct Request Process is not designed to hear matters other than those related to unpaid rent, I dismiss the portion of the landlord's application that is seeking an order of possession for the tenant breaching an agreement with the landlord, with leave to reapply.

Conclusion

Based on my findings above I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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 29, 2010.

Dispute Resolution Officer