



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 section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipts were submitted in the Landlord's evidence however the Landlord did not indicate on the proof of service document which date the service was conducted via registered mail.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following evidentiary material 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 which was signed by all parties on July 17, 2010 for a fixed term tenancy beginning August 1, 2010 and switches to a month to month tenancy after January 31, 2011, for the monthly rent of \$1,750.00 due on 1st of the month and a deposit of \$875.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, October 5, 2010 with an effective vacancy date of September 12, 2010 due to \$1,750.00 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 either when it was posted to the rental unit door on September 2, 2010 at 10:00 a.m. and that this service was witnessed by the same person who indicated they served the documents. In addition the Proof of Service indicates a third party witnessed the landlord serve the 10 Day Notice directly to the tenants.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and find that I cannot determine when the Notice of Dispute Resolution was served on the Tenant. Without the date of service I cannot determine if the hearing packages were served to the Tenant in accordance with the Act.

In addition, I cannot determine if the landlord served the tenants with the 10 Day Notice to End Tenancy for Unpaid Rent and if they did by which method, either in person or by posting the notice on the rental unit door. The method of service impacts my ability to determine the effective date of the notice to end the tenancy.

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: October 29, 2010.

Dispute Resolution Officer