



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

The Landlord has applied for a monetary Order which requires that the Landlord serve each respondent as set out under section 89(1) of the *Act*. There is no evidence to show that the Notice of Hearing and the Application for Dispute Resolution were served in accordance with section 89(1)(a)(b)(d) or (e) of the *Act*.

The Landlord stated that he sent one package to the rental unit which contained copies of the Notice of Hearing and Application for Dispute Resolution for each Tenant. He stated that the package was sent to the rental unit, via registered mail, on December 02, 2010 and he cited a Canada Post tracking number to corroborate that statement. Based on the information provided, I am unable to determine which of the Tenants received that package.

As I am unable to determine which of the Tenants has been served by registered mail, I am unable to conclude which of the parties has been served in accordance with section 89(1)(c) of the *Act*. On this basis, I dismiss the Landlord's application for a monetary Order, with leave to reapply.

The Landlord has requested an Order of Possession naming both Tenants. Although I do not know which of the Tenants has been served by registered mail, I find that at least one of the Tenants has been served by registered mail in accordance with section 89(2)(b) of the *Act*. Section 89(2)(c) of the *Act* determines that the Landlord may leave a copy of the Application for Dispute Resolution related to a request for an Order of Possession at a tenant's residence with an adult who apparently resides with the tenant. As at least one of the Tenants has been served by registered mail, I can therefore conclude that the other Tenant has been served in accordance with section 89(2)(c) of the *Act*, as both parties are adults. I therefore find that both parties have been properly served with the portion of the Application for Dispute Resolution relating to the Order of Possession.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent, pursuant to section 55 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord stated that this tenancy began on January 01, 2010 and that the Tenants are required to pay monthly rent of \$575.00 on the first day of each month.

The Landlord stated that the Tenants have not paid any rent for October, November, or December of 2010 and that they still owe \$325.00 in rent from June of 2010.

The Landlord stated that he personally served the Tenant with the initials "N.B." with a Ten Day Notice to End Tenancy for Unpaid Rent on November 02, 2010.

The Landlord stated that he did not provide a copy of the Notice to End Tenancy to the Residential Tenancy Branch and he did not serve a copy of the Notice to End Tenancy as evidence to the Tenant.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants entered into a tenancy agreement with the Landlord that requires the Tenants to pay monthly rent of \$575.00 on the first day of each month, and that the Tenants had not paid all of the rent that was due by November 01, 2010.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the date it is due by giving notice to end the tenancy on a date that is not earlier than ten days after the date the tenant receives the notice. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Landlord personally served the Tenant with a Ten Day Notice to End Tenancy on November 02, 2010.

Section 46(2) of the *Act* stipulates that a notice served under this section must comply with section 52 of the *Act*. As the Landlord has not provided me with a copy of the Ten Day Notice that was served on November 02, 2010, I find that I have insufficient evidence to conclude that the Notice to End Tenancy complies with section 52 of the *Act*.

Conclusion

As the Landlord has failed to establish that the Ten Day Notice to End Tenancy that was served on November 02, 2010 complies with section 52 of the *Act*, I dismiss the Landlord's application for an Order of Possession.

As the Landlord's has failed to establish that his Application for Dispute Resolution has merit, I dismiss the Landlord's claim to recover the cost of filing this Application for Dispute Resolution.

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: December 07, 2010.

Dispute Resolution Officer