



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 on February 2, 2011, the Landlord served the Tenant with the Notice of Direct Request Proceeding, via registered mail. Incomplete Canada Post receipts were provided in the Landlord's evidence.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met requirements to obtain an Order of Possession and a Monetary Order for unpaid rent through the direct request process?

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 tenancy agreement entered into on June 30, 2007 for a month to month tenancy effective July 1, 2007. The rent is due on the first of each month in the amount of \$700.00 and a security deposit of \$325.00 was paid on November 1, 2003. The address of the rental unit is different than the address in dispute as listed on the application.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 23, 2011, with an effective vacancy date of February 2, 2011 due to \$400.00 in unpaid rent which was due on January 1, 2011; and
- a note on the Landlord's application that states the Landlord was paid \$450.00 towards the Tenant's rent which leaves a balance due of \$400.00; and

- Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally to the Tenant on January 23, 2011. The Tenant signed the proof of service form acknowledging receipt of the Notice.

Analysis

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 2, 2011, the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail however the Landlord has failed to fully complete the registered mail receipt to prove which address the registered mail package was sent to.

The Landlord is seeking to end the tenancy due to a breach; however, the Landlord has the burden of proving that the Tenant was served with notice of the Direct Request Proceeding, in accordance with section 89 of the Act which states that if served via registered mail it must be sent to the address where the tenant(s) reside.

In the presence of incomplete information pertaining to the service of the Direct Request Proceeding documents I cannot determine if service was effected in accordance with the Act.

The Landlord has provided a copy of a tenancy agreement which indicates the tenancy is for the basements suite and rent is \$700.00 per month. The application indicates the address of dispute is the upper floor of the unit and that rent is \$850.00 per month (\$450.00 was paid leaving \$400.00 outstanding).

Based on the aforementioned I find the Landlord's application does not meet the requirements of the Direct Request process and the application is dismissed, with leave to reapply.

Conclusion

I HEREBY 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: February 10, 2011.

Residential Tenancy Branch