



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 Landlords for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 9, 2011, at 10:00 p.m. the Landlords served each Tenant with the Notice of Direct Request Proceeding, in person at the rental unit. Based on the written submissions of the Landlords, I find that the Tenants have been served with the Dispute Resolution Direct Request Proceeding documents in accordance with the Act.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession and a Monetary Order under 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 each Tenant; and

- A copy of a tenancy agreement signed by the Landlord and Tenants on September 30, 2010, for a month to month tenancy effective October 1, 2010. Rent is payable on the first of each month in the amount of \$1,150.00, and a security deposit of \$575.00 was paid on September 20, 2010; and
- A copy of an old form of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, February 1, 2011, with an effective vacancy date of February 10, 2011 due to \$1,150.00 in unpaid rent which was due on February 1, 2011; and
- A copy of a current form of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, February 2, 2011, with an effective vacancy date of February 11, 2011 due to \$1,150.00 in unpaid rent which was due on February 2, 2011; and

Documentary evidence filed by the Landlords indicates that the Tenants were served one of the 10 Day Notices in person on February 1, 2011 and the other was served in person on February 2, 2011 in the presence of a witness.

Analysis

The Landlord has provided a copy of each of the 10 Day Notices to End Tenancy, one issued on February 1, 2011 and the other on February 2, 2011.

I find that the 10 Day Notice issued by the Landlords on February 1, 2011, does not meet the requirements of the Act as the Notice was issued on an old document so it does not meet the requirements of section 52 of the Act and the Notice was issued on February 1, 2011 stating rent is due February 1, 2011. Therefore the Notice was issued prematurely as rent would not be past due until February 2, 2011. Based on the aforementioned I find the 10 Day Notice to End Tenancy issued on February 1, 2011, is invalid and I hereby dismiss the Landlord's application without leave to reapply.

The 10 Day Notice issued by the Landlords on February 2, 2011, does not meet the requirements of the Act as the Notice was issued on February 2, 2011 stating rent is due February 2, 2011. Therefore the Notice was issued prematurely as rent would not be past due until February 2, 2011. This contradicts the terms of the tenancy agreement which stipulates the rent is due on the first of each month. Based on the aforementioned I find the 10 Day Notice to End Tenancy issued on February 2, 2011, is invalid.

Having found both Notices to be invalid, I hereby dismiss the Landlords' application without leave to reapply.

Conclusion

I HEREBY ORDER the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated February 1, 2011, is void and is without force or effect.

I HEREBY ORDER the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated February 2, 2011, is void and is without force or effect.

I HEREBY DISMISS the Landlord's application, without 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 14, 2011.

Residential Tenancy Branch