

DECISION

Dispute Codes

OPR, MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding on the Tenant. The Proof of Service document declares that on June 15, 2011 at 7:00 p.m., the Landlord served the Notice of Direct Request Proceeding on the Tenant by posting the documents to the Tenant’s door at the rental unit.

The Proof of Service of the Notice of Direct Request document clearly states that a Notice of Direct Request may not be served by posting it to a tenant’s door for the purpose of requesting a Monetary Order. Section 89 of the Act provides the methods of service for an application for an Order of Possession and a Monetary Order. Section 89 states:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
 - (b) by sending a copy by registered mail to the address at which the tenant resides;
 - (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
 - (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
 - (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].
- (3) A notice under section 94.21 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

A landlord may serve a tenant with the Notice of Direct Request by posting it on a tenant's door for the purpose of requesting an Order of Possession under Section 55 of the Act, but not for the purpose of requesting a Monetary Order. Therefore, the Landlord's application for a Monetary Order is dismissed **with leave to reapply**.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding upon the Tenant;
- A copy of the Proof of Service of the Notice to End Tenancy upon the Tenant;
- A copy of a one page residential tenancy agreement which was signed by the parties on April 24, 2010, indicating a monthly rent of \$600.00; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 25, 2011, with an effective vacancy date of June 2, 2011, for \$900.00 in unpaid rent that was due on May 1, 2011.

The Landlord's Application for Dispute Resolution filed June 13, 2011, indicates that the Tenant owes rent in the amount of \$900.00.

The Landlord's documentary evidence indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by handing the document to the Tenant at 7:00 p.m. on May 25, 2011. The Proof of Service document was signed by a witness.

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

Analysis

The tenancy agreement provided in evidence does not comply with Section 13 of the Act and in particular does not state what day in the month, or other period on which the tenancy is based, that rent is due. Therefore, the Landlord has provided insufficient evidence that the Notice to End Tenancy is a valid Notice.

Therefore, the Landlord's Application is dismissed with leave to reapply by way of participatory Hearing.

Conclusion

The Landlord's Application is dismissed with leave to reapply by way of participatory Hearing.

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*.

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Dated: June 30, 2011.
