



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

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.

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 residential tenancy agreement which was signed by the parties on December 8, 2009, indicating a monthly rent of \$1,475.00 due on the first day of each month;
- Copies of two documents entitled "Utility Invoice for 3023 Freethy (main)"
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which was issued on May 7, 2011, with an incomplete effective vacancy, for \$370.69 in unpaid utilities.

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 May 16, 2011 at 4:55 p.m., the Landlord served the Notice of Direct Request Proceeding on the Tenant by handing the documents to another occupant at the rental unit.

Analysis

Section 89(2) of the Act provides methods of service of a Notice of Direct Request Proceeding when a landlord is seeking an Order of Possession:

Special rules for certain documents

89 (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*].

On the Landlord's Proof of Service of the Notice of Direct Request there is no indication that the other occupant was an adult. Therefore, I find the Landlord has provided insufficient evidence that the Tenant was served with the Notice under the provisions of Section 89(2)(c) of the Act.

It is important to note that the Notice to End Tenancy that was issued on May 7, 2011, does not have an effective date. Section 52(c) of the Act requires a Notice to End Tenancy state the effective date of the Notice in order to be effective. Therefore, I find that the Notice issued May 7, 2011 is of no force or effect.

For the reasons stated above, the Landlord's application is dismissed without leave to reapply.

Conclusion

The Landlord's application is dismissed 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: May 27, 2011.
