

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 July 29, 2011 at 2:46 p.m., the Landlord’s agent served the Notice of Direct Request Proceeding on the Tenant by couriering the documents to the rental unit. The Landlord provided a copy of the waybill and proof that the documents were delivered to the Tenant on August 2, 2011. Based on the written submissions of the Landlord, I find that the Tenant has been sufficiently served with the Direct Request Proceeding documents pursuant to the provisions of Section 71(2)(c) of the Act. **However, the Landlord is hereby cautioned that service by way of courier is not an allowable method of service as provided in Section 89 of the Act.**

Issue(s) to be Decided

- Is the Landlord entitled to an Order of possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

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 in February, 2010, indicating a monthly rent of \$900.00 due on the first day of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on July 8, 2011, with an effective vacancy date of July 18, 2011, for \$1,524.29 in unpaid rent that was due on July 1, 2011.

The Landlord's Application for Dispute Resolution filed July 29, 2011, indicates that the Tenant paid \$900.00 towards unpaid rent on July 13, 2011, and that \$624.29 remains due and owing.

The Landlord's documentary evidence indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting the document on the Tenant's door at 6:00 p.m. on July 8, 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. The Tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the Tenant was duly served with the Notice to End Tenancy, in accordance with the provisions of Section 88(g) of the Act. Section 90 of the Act deems service in this manner to be effected 3 days after posting the document.

I accept the evidence before me that the Tenant failed to pay all of the rent owed within the 5 days granted under Section 46 (4) of the Act. The Landlord did not provide an accounting of what the \$1,524.29 was comprised of (for example, unpaid rent; late fees; parking; etc.) The Direct Request Process is intended for applications with respect to **unpaid rent** only. The Landlord did not provide evidence with respect to the payment of \$900.00 made on July 13th (for example, did the Landlord explain that it was not reinstating the tenancy and was accepting the payment for use and occupancy only?) In the direct request process, there is no ability for the Dispute Resolution Officer to ask questions of the applicant.

Based on the foregoing, I find that the Landlord has provided insufficient evidence to establish that the Tenant owes **rent** in the amount of \$624.29, or that the Tenant is aware that the Landlord did not reinstate the tenancy when he paid \$900.00 on July 13,

2011, which is 4 days after being deemed served with the Notice to End Tenancy and therefore within the 5 days allowed under the Act.

I dismiss the Landlord's application with leave to reapply.

Conclusion

The Landlord's application is dismissed 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: August 15, 2011.

Residential Tenancy Branch