



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DIRECT REQUEST 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 and a monetary order.

Preliminary Matter

Evidence indicated that the landlord received the Direct Request Proceeding package on July 28, 2011 and was instructed that each tenant must be served pursuant to section 89 of the Act. In order to proceed with the Direct Request Proceeding the landlord was then required to complete, sign and submit a form provided in the package, titled, "Proof of Service of the Notice of Direct Request Proceeding", along with the tracking slips if registered mail was sent.

I find that the landlord provided verification that one of the co-tenants was served with the hearing package in person on July 28, 2011. No proof of Service was submitted to verify that the Notice of Direct Request Proceeding was ever served to the other co-tenant, who was also named as respondent.

Sections 88 and 89 of the Act determine the method of service for documents. The Landlord has applied for a Monetary Order which requires that the landlord serve both of the tenants as set out under Section 89(1). In this case only the one co-tenant had been personally served with the Notice of Direct Request Proceeding documents. Tenants are jointly and severally responsible for the payment of rent under a tenancy agreement. However as the landlord has not verified service of the Notice of Direct Request Proceeding documents upon the other co-tenant, as required by Section 89(1) of the Act, the landlord's monetary claim against the unserved co-tenant, must be dismissed without leave to reapply and this dispute proceeding and claim will proceed only against the co-tenant who had been properly served.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession and a monetary Order for rental arrears pursuant to 55 and 67 of the *Residential Tenancy Act (the Act)*. I have reviewed all documentary evidence.

Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a copy of the Notice to End Tenancy for Unpaid Rent dated July 15, 2011 and a "Proof of Service" form stating that the Notice was served by registered mail on July 15, 2011. The landlord provided a copy of a Canada Post tracking slip showing that registered mail was sent on July 14, 2011.

The purpose of serving documents under the *Act* is to notify the person of a failure to comply with the *Act* and of their rights in response. The landlord, seeking to end the tenancy has the burden of proving that the tenant was served with the Notice to End Tenancy. Given that the Ten Day Notice to End Tenancy for Unpaid Rent was dated July 15, 2011, I find the proof of service confirming that this was sent on July 14, 2011 to be inconsistent with the landlord's testimony and the other documentation in the application.

Given the above, I cannot find that the tenant was properly served with the July 15, 2011 Notice to End Tenancy for Unpaid Rent that was included in the landlord's application as evidence. As the Direct Request Process is solely reliant on the documentation submitted in evidence, I find that the landlord's application must be dismissed.

Conclusion

Based on the evidence submitted by the landlord, I hereby dismiss the landlord's application in its entirety 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: August 09, 2011.

Residential Tenancy Branch