



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 9, 2011 the landlord served the tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the written submissions of the landlord, I find that the tenants have been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on July 17, 2010 for a 1 year fixed term tenancy beginning on August 1, 2010 for the monthly rent of \$1,000.00 due on the 1st of each month and a security deposit of \$500.00 was paid. The tenancy agreement stipulates the tenancy terminates on August 31, 2011 and the "premises must be returned in good conditions to the landlord"; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 22, 2011 with an effective vacancy date of September 2, 2011 due to \$1,500.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the months of July, August and September 2011 and that the tenants

were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on August 22, 2011 at 9:15 p.m. and that this service was witnessed by a third party.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

Analysis

The tenancy agreement stipulates that the tenants must give possession of the rental unit back to the landlord effective August 31, 2011. In the absence of an updated tenancy agreement it is unclear what the terms of a new tenancy may be.

As the Direct Request process does not include an ability to question either the landlord or tenants in relation to the possible terms of the tenancy in September 2011, I find the Direct Request process is not suitable to adjudicate the landlord's claim.

Conclusion

For the reasons noted above, I dismiss this Application, in its entirety, 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: September 19, 2011.

Residential Tenancy Branch