



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded 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 for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 3, 2011, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail.

Section 90 of the Act determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents.

Issues 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;
- A copy of a residential tenancy agreement which was signed by the parties on June 1, 2011, indicating that the tenant is obligated to pay \$ 875.00 in rent in advance on the first day of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which the landlord served on the tenant on September 17, 2011 for \$875.00 in unpaid rent due in the month of September; and

- A copy of the Proof of service of the Notice to End Tenancy.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay all rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by the landlord posting the notice on the door of the rental unit on September 17, 2011. Section 90 of the Act deems that the tenant received the notice 3 days later on September 20, 2011.

The Notice states that the tenant had five days to pay the rent in full 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 and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

In scrutinizing the notice to end tenancy, I note that the notice does not list a complete date on which the notice is effective as it does not include a month or year. Section 52(c) of the Act requires that a notice include an effective date. I find that the notice is fatally flawed. I dismiss without leave to reapply the claim for an order of possession. The landlord is free to serve on the tenant another notice which complies with the requirements of the Act.

I accept the evidence before me that the tenant has failed to pay \$875.00 in rent for the month of September. I find that the landlord is entitled to recover the rental arrears and I grant the landlord a monetary order

Conclusion

I grant the landlord a monetary order under section 67 for \$875.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: October 06, 2011

Residential Tenancy Branch