



Dispute Resolution Services

Page: 1

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 28th, 2011, the landlord served the tenant with the Notice of Direct Request Proceeding by 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 Request Proceeding;
- A copy of a residential tenancy agreement which was signed by the landlords on June 11th, 2011 and by the tenants on June 12th, 2011, indicating that the tenants are obligated to pay \$500.00 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 October 14th, 2011 for \$500.00 in unpaid rent due in the month of September 2011; and

- A copy of the Proof of service of the Notice to End Tenancy showing that the landlord served the notice to end tenancy on the tenant by October 14th, 2011.

Section 90 of the Act provides that because the notice to end tenancy was served by posting the notice on the tenants' door, the tenants are deemed to have received the notice 3 days later on October 17th, 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

I find that the tenant received the notice to end tenancy on October 17th, 2011. I have reviewed all documentary evidence and find that the unpaid rent of \$500.00 stated on the 10 Day Notice to End Tenancy is different than the amount of \$102.00 stated on the landlord's application for dispute resolution.

I also note that the 10 Day Notice issued to the tenant pertained to unpaid rent for the month of September 2011, and I am unable to determine whether the discrepancy in the unpaid rent between September and the time the landlord made his application for dispute resolution was the result of the tenant paying any rental arrears, and whether the 10 Day Notice to End Tenancy remains valid.

Conclusion

For the above noted reasons I adjourn this matter and direct that it be reconvened as a participatory hearing. Both parties will be notified of the new hearing date.

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: November 7th, 2011

Residential Tenancy Branch