



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* (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 to declare that on November 18, 2011 the landlord served the female tenant with the Notice of Direct Request Proceeding via personal delivery at the rental unit. The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding to declare that on November 18, 2011 the landlord served the male tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit. The landlord did not provide a Canada Post receipt or tracking number as evidence of service by registered mail.

Section 89 of the Act determines the method of service for documents related to a dispute resolution proceeding.

The landlord has requested an Order of Possession with this application. Section 89(2) of the Act determines that the landlord may leave a copy of the Application for Dispute Resolution related to a request for an Order of Possession at the tenant's residence with an adult who apparently resides with the tenant. I find that by serving the female tenant with the Notice of this proceeding, both tenants have been sufficiently served with the portion of the Application for Dispute Resolution relating to an Order of Possession.

The landlord has applied for a Monetary Order which requires that the landlord serve each respondent as set out under section 89(1) of the Act. Leaving a copy of the landlord's Application for Dispute Resolution with the female tenant is not sufficient service upon the male tenant under section 89(1). Without proof of registered mail I find insufficient proof of service upon the male tenant. Therefore, I find that the request for a Monetary Order against both tenants must be amended to exclude the male tenant since it has not been shown that he was properly served with the monetary claim.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and monetary compensation 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 for each tenant;
- A copy of a residential tenancy agreement which was signed by the parties on October 14, 2010, indicating a monthly rent of \$890.00 due on the 1st day of every month;
- A copy of the tenants' ledger;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 7, 2011 with a stated effective vacancy date of November 17, 2011, for \$890.00 in unpaid rent as of November 1, 2011; and,
- A copy of a Proof of Service of the 10 Day Notice indicating landlord posted the 10 Day Notice on the tenants' door on November 9, 2011 in the presence of a witness.

The 10 Day Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants 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 tenants have been served with a 10 Day Notice to End Tenancy as declared by the landlord. Since the Notice was posted on the door it is deemed to be received three days later in accordance with section 90 of the Act. The effective date is also automatically changed to read November 22, 2011 in accordance with section 53 of the Act.

I accept the evidence before me that the tenants failed to pay the rent owed in full or dispute the Notice within 5 days of receiving the Notice as permitted under section 46(4) of the Act. Accordingly, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ends on the effective date of the Notice. Therefore, I find that the tenancy ends on November 22, 2011 and the landlord is entitled to an Order of Possession effective two (2) days after service upon the tenant.

I find the landlord is entitled to monetary compensation for unpaid rent in the amount of \$890.00 and the landlord is provided a Monetary Order to serve upon the female tenant.

The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an Order of that court. The security deposit remains in trust to be administered in accordance with the Act.

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenants. The landlord is provided a Monetary Order in the amount of \$890.00 to serve upon the tenant.

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 22, 2011.

Residential Tenancy Branch