



Dispute Resolution Services

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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 based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declared that on January 13, 2012, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail. The landlord provided a copy of the Canada Post Tracking Number to confirm this mailing.

Based on the written submissions of the landlord and in accordance with sections 88 and 90 of the *Act*, I find that the tenant has been deemed duly served with the Direct Request Proceeding documents on January 18, 2012, the fifth day after their mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and two tenants named on that agreement. The landlord and the female tenant named by the landlord as the tenant on the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) and the landlord's subsequent application for dispute resolution apparently signed the tenant agreement on October 31, 2011. (The female tenant dated her signature as October 31, 2012, which I consider to have been October 31, 2011.) It would appear that SI, a male tenant identified in the residential tenancy agreement also signed the tenancy agreement, although he did not date his signature. Based on the landlord's application for dispute resolution, it would appear that Mr. I never resided in the rental unit. According

to the tenancy agreement, monthly rent was set at \$925.00, payable in advance on the 1st day of the month; and

- A copy of a 10 Day Notice posted on the female tenant's (the tenant's) door on January 2, 2012, with a stated effective vacancy date of January 11, 2012, for \$925.00 in unpaid rent and \$45.37 in unpaid utilities.

Witnessed documentary evidence filed by the landlord stated that the 10 Day Notice was posted on the tenant's door at 11:30 a.m. on January 2, 2012. In accordance with sections 88 and 90(c) of the *Act*, I find that the tenant was deemed to have been served with this 10 Day Notice on January 5, 2012, the third day after its posting on her door.

The Notice states that the tenant had five days from the date of service to pay the amount identified as owing in full or apply for Dispute Resolution or the tenancy would end. The tenant 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 tenant has been served with notice to end tenancy as declared by the landlord. The landlord's written evidence stated that the Proof of Service of the Notice of Direct Request document was sent to the tenant by registered mail on January 13, 2012.

In reviewing the landlord's application, I find that the landlord's failure to provide clear and adequate information renders it difficult for me to approve her application on the basis of the direct request process. For some of this missing or unclear information, I would be prepared to make a decision regarding her application by applying assumptions or interpretations of her evidence that would seem reasonable under the circumstances. For example, as noted above the tenant's dating of the signature of her residential tenancy agreement as October 31, 2012 is clearly incorrect as that date has not yet occurred. For that reason, I am satisfied that the correct date of the tenant's signing of this tenancy agreement was October 31, 2011. Similarly, I am prepared to accept the landlord's apparent assertion that the sole tenant who occupied and resided in this rental unit is the tenant identified in the landlord's application, despite two tenants being identified in the residential tenancy agreement and signing that agreement.

I also note that the Residential Tenancy Branch is only considering applications for monetary awards for unpaid rent and, as such, the landlord's application for a monetary award of \$45.37 for recovery of unpaid utilities could not be considered without a participatory hearing. However, if that were the only substantive deficiency in the landlord's application, I could consider her application for an end to this tenancy, an Order of Possession and a monetary award for unpaid rent.

The more critical deficiency that prevents me from considering the landlord's application without a participatory hearing lies in the lack of information regarding the landlord's claim for unpaid rent and for an end to this tenancy on the basis of the tenant's failure to

pay rent for January 2012. Although the landlord did complete a monetary order worksheet, she did not provide any tenant rental ledger, account statement or any other method of confirming that the tenant continues to owe rent for January 2012. The landlord's application for dispute resolution has a number of figures that are crossed out. In the Details of the Dispute, the landlord stated the following regarding her application:

Since K, the tenant, has moved in, has always been very stressfull in collecting her rent; in which has never paid on time. Never answers my phone calls nor her door...S (the male tenant) has never residing in Sute ABC.
(As in original but for anonymizing names and the suite number)

Based on these details, it is unclear whether the landlord is seeking an end to this tenancy on the basis of unpaid rent or a recurring pattern of unpaid rent. If the application is based on a recurring pattern, the landlord would need to issue a different type of notice to end this tenancy.

Without clarification of these issues, the landlord has not met the onus placed on her to supply documents that would prove the amount of rent owing (e.g., rent ledger, receipt book) in support of her application for a monetary award. I find that I am unable to consider her application for a monetary award against the tenant by way of a Direct Request proceeding. As I find that the landlord has not provided sufficient evidence to demonstrate that rent was owing and that she has issued the correct notice to end this tenancy, I am unable to consider in a Direct Request proceeding that the tenant has accepted that the tenancy ended on the effective date of the 10 Day Notice because of unpaid rent.

Under these circumstances, I adjourn this application to be reconvened as a participatory hearing.

Conclusion

I adjourn the landlords' direct request application for an Order of Possession and a monetary Order to be reconvened at a participatory hearing. Notices of a participatory hearing date will be sent to the landlord by the Scheduler for the Residential Tenancy Branch. The landlord is responsible for serving the tenant within three days of receiving a hearing date from the Residential Tenancy Branch. 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: January 20, 2012

Residential Tenancy Branch