



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 which declares that on February 16, 2012 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit. The landlord provided a Canada Post receipt and tracking number as evidence of service. Section 90 of the Act determines that the documents are deemed to have been received five days later.

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

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 the tenant, including the registered mail receipt;
- A copy of a residential tenancy agreement which was signed by the parties on August 14, 2011, indicating a monthly rent of \$950.00 due on the 1st day of every month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 3, 2012 with a stated effective vacancy date of February 15, 2012, for \$950.00 in unpaid rent as of February 1, 2012; and,

- A copy of a Proof of Service of the 10 Day Notice without the signature of a witness indicating the landlord dropped the 10 Day Notice in the tenant's mail slot on February 3, 2011.

On the landlord's Application for Dispute Resolution the landlord indicates the 10 Day Notice was served "by hand" in the space provided for describing how service of a Notice to End Tenancy occurred.

Analysis

As outlined in the Fact Sheet: Direct Request an application made under the Direct Request procedure must be accompanied by proof of service of the 10 Day Notice that meets one of the following criteria:

Proof of service of the 10 Day Notice to End Tenancy as either a **registered mail receipt** or **written receipt signed by the tenant or witnessed by a third party** confirming the notice was served.

In this case I find I was not provided with proof of service of the 10 Day Notice that meets the criteria for the Direct Request procedure.

I find that this application cannot proceed under the Direct Request procedure and the landlord's application is dismissed with liberty to reapply for a participatory hearing.

Conclusion

The landlord did not provide sufficient proof of service of the 10 Day Notice. The landlord's application is dismissed with liberty to reapply for a participatory hearing.

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: February 23, 2012.

Residential Tenancy Branch