



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of 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 10, 2012, at 3:15 p.m. the Landlord served the female Tenant with the Notice of Direct Request Proceeding in person at the rental unit. Based on the written submissions of the Landlord, I find the female Tenant has been served with the Dispute Resolution Direct Request Proceeding documents in accordance with section 89 of the *Residential Tenancy Act*.

Issue(s) to be Decided

1. Has the Landlord served each Tenant with the notice of this Direct Request Proceeding?
2. Has a valid 10 Day Notice to End Tenancy for unpaid rent been issued and served in accordance with the *Residential Tenancy Act*?
3. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the female Tenant;
- A copy of a residential tenancy agreement which was signed by the Landlord and both the female and male Tenants on December 23, 2011, for a month to month tenancy beginning January 1, 2012. The monthly rent of \$750.00 is due on the first day of each month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, February 3, 2012, with an effective vacancy date of February 13, 2012, due to \$750.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid when it was left with each Tenant, in person, on February 3, 2012 at approximately 4:40 p.m. in the presence of a witness.

Analysis

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlord has applied for a monetary Order which requires that the Landlord serve **each** respondent Tenant as set out under *Residential Tenancy Rules of Procedures*.

In this case only one of the two Tenants, the female Tenant, has been personally served with the Notice of Direct Request Proceeding documents. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only the Tenant (s) who has been properly served with Notice of this Proceeding. As there is insufficient evidence to support that the male Tenant has been properly served the Application for Dispute Resolution as required, the monetary claim against the male Tenant is dismissed without leave to reapply. The Monetary Claim will proceed against the female Tenant.

Section 89(2)(c) of the Act provides that when applying for an Order of Possession the Direct Request Proceeding Documents may be served by leaving a copy at the tenant's residence with an adult who apparently resides with the Tenant. As the female Tenant was served with the hearing documents I find the application for an Order of Possession may proceed against both Tenants.

Order of Possession - I have reviewed all documentary evidence and accept that the Tenants have been served with the 10 Day Notice to end tenancy as declared by the Landlord. The Notice was received by the Tenants on February 3, 2012 and the effective date of the notice is February 13, 2012, pursuant to section 90 of the Act. I accept the evidence before me that the Tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the Act.

Based on the foregoing, I find that the Tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and I hereby grant the Landlord an Order of Possession.

Monetary Order – The evidence supports that the Tenants have failed to pay the February 1, 2012 rent in violation of section 26 of the Act which provides that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order for unpaid rent of **\$750.00** against the female Tenant.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This Order is legally binding and must be served upon the Tenants.

The Landlord's decision will be accompanied by a Monetary Order for **\$750.00**. This Order is legally binding and must be served upon the female 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: February 13, 2012.

Residential Tenancy Branch