



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 declares that on February 22, 2012, the landlord handed the Tenant the Notice of Direct Request Proceeding.

Issue(s) to be Decided

Has the landlord duly served the tenant with the Notice of Direct Request Proceeding which would need to include a copy of the landlord’s Application for Dispute Resolution?

If so, are the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

If the landlord’s Notice of Direct Request Proceeding has been served to the tenant, 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 the tenant on February 1, 2012 for a tenancy commencing on February 1, 2012, indicating a monthly rent of \$1,450.00 due on the 1st day of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenant’s door on February 22, 2012, with a stated effective vacancy date of March 3, 2012, for \$1,450.00 in unpaid rent; and
- The landlord’s March 2, 2012 Application for Dispute Resolution in which the landlord sought an Order of Possession for unpaid rent and a monetary Order for \$1,450.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicated that the tenant failed to pay all outstanding rent was served by posting the 10 Day Notice on the tenant's door at 7:30 p.m. on February 22, 2012. In accordance with sections 88 and 90 of the *Act*, the tenant was deemed served with this 10 Day Notice on February 25, 2012.

The Notice states that the tenant had five days from the date of service to pay the rent 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.

Based on the written submissions of the landlord, I find that the landlord could not have duly served the tenant with valid Direct Request Proceeding documents on February 22, 2012 at 7:30 p.m. as maintained in the landlord's signed Proof of Service Document. I note that this is the same time and date shown on the witnessed statement regarding the service of the 10 Day Notice. In the landlord's subsequent March 2, 2012 Application for Dispute Resolution, the landlord stated that he was unable "to catch" the tenant at home on February 22, 2012, so he placed the 10 Day Notice in a plastic bag and attached it to her door.

A valid Notice of a Direct Request Proceeding requires a copy of the Application for Dispute Resolution. In this case, I find that the landlord did not sign the Application for Dispute Resolution until March 2, 2012, the same date as the Application for Dispute Resolution was received by the Residential Tenancy Branch (the RTB). The RTB did not process the landlord's Notice of Direct Request until March 5, 2012. Based on the March 2, 2012 date of the landlords' Application for Dispute Resolution and the RTB's receipt of that Application on March 2, 2012, I find that the landlord has not demonstrated that he duly served the tenant with Notice of the Direct Proceeding including a copy of the Application for Dispute Resolution on the date stated in the Proof of Service of the Notice of Direct Request. I find that the documents the landlord served to the tenant on February 22, 2012 could not have included his March 2, 2012 Application for Dispute Resolution.

As I am not satisfied that the tenant has been duly served with notification of the landlord's Application for Dispute Resolution, I am not satisfied that she has been given an opportunity to respond to the landlord's application which would adversely affect her. Under these circumstances, I cannot consider the landlord's Application for Dispute Resolution.

Conclusion

I dismiss the landlord's application with leave to reapply.

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: March 22, 2012

Residential Tenancy Branch