



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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 5, 2012, at 10:30 a.m. the landlord personally served the tenant with the Notice of Direct Request Proceeding at the rental unit address. Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

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?

Is the landlord entitled to 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;
- A copy of a residential tenancy agreement which was signed by the parties on November 25, 2011, indicating a monthly rent of \$1,025.00 due on the first day of the month;
- A tenant ledger indicating unpaid strata fines, fees and parking violations; and
- The first page of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on March 5, 2012, with a stated effective vacancy date of March 31, 2012, for \$1,025.00 plus another sum totaling \$1,475.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting to the door on March 5, 2012. The landlord did not supply a copy of a proof of service document setting out the time of service or who was present as a witness.

Analysis

In the absence of a proof of service document setting out all of the required details of service, I find that there is insufficient evidence before me to determine that the Notice was served to the tenant. The landlord has not indicated who posted the Notice, to which door it was posted, what time it was posted and if there was a witness present.

Further, the landlord has supplied only 1 page of a 2 page Notice, as evidence.

The tenant ledger supplied as evidence does not include reference to any unpaid rent; only strata fees, parking violation fees and bylaw infraction fees. There was no calculation of the amount claimed; that portion of the application was not completed. Fees are not considered as rent and should not be included on a 10 Day Notice to End Tenancy for Unpaid Rent.

Therefore, in the absence of the details of service and a calculation showing rent that is owed, I find that the application is dismissed with leave to reapply. The landlord may choose to attend a participatory hearing so that the details of the tenancy and amount owing can be clarified.

Conclusion

The application is dismissed 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: April 16, 2012.
