



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 for each tenant to declare that on June 14, 2012 the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit. The landlord provided a Canada Post receipts and tracking numbers 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 tenants have 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 each tenant, including the registered mail receipts;
- A copy of a residential tenancy agreement which was signed by the parties on March 15, 2012, indicating a monthly rent of \$900.00 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 an unspecified date with a stated effective vacancy date of June 1, 2012 for \$900.00 in unpaid rent as of June 1, 2012; and,

- A copy of a Proof of Service of the 10 Day Notice indicating landlord personally served the 10 Day Notice to both of the tenants on June 5, 2012. The service does not appear to be signed by a witness.

On the Landlord's Application for Dispute Resolution the landlord states he served the 10 Day Notice via personally delivery on June 6, 2012.

Analysis

The purpose of serving documents under the Act is to notify the person being served of their breach and the action being taken against them. The party serving the document has the burden to prove service of a valid 10 Day Notice upon the tenants. The landlord bears the burden to prove service in this case.

As the Direct Request procedure is based upon written submissions only, the submissions must be sufficiently clear, valid and supported by evidence in order to succeed. I find the evidence and submissions with respect to issuance and service of the 10 Day Notice to be inconsistent, insufficient and unclear. To illustrate: the landlord did not date the Notice when he issued it; the effective date is incorrectly stated as June 1, 2012; the Proof of Service is not signed by the witness; the proof of Service and the Application for Dispute Resolution indicate different dates of service.

Since I am unsatisfied as to service of the 10 Day Notice I dismiss the landlord's application with leave to reapply.

Conclusion

The landlord did not meet his burden to prove service of a valid 10 Day Notice and this application was 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: June 20, 2012.

Residential Tenancy Branch