



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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declared that on June 13, 2012, Landlord CV posted the Notice of Direct Request Proceeding on the tenant's door. In her Proof of Service document, Landlord CV stated that she understood that the landlords would be forfeiting their application for a monetary order if this matter were completed by way of a direct request proceeding.

Based on the written submissions of the landlords, I find that the tenant has been duly served with the Direct Request Proceeding documents seeking an end to this tenancy and an Order of Possession.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Background and Evidence

The landlords 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 Landlord CV and the tenant on March 31, 2012, indicating a monthly rent of \$550.00 due on the 1st day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) placed under the tenant's door on June 2, 2012 with a stated effective vacancy date of June 13, 2012, for \$550.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord stating that the tenants failed to pay all outstanding rent was served by placing the 10 Day Notice under the tenant's door at 6:35 p.m. on June 2, 2012 when the tenant allegedly refused to open her door.

Analysis

Section 89(1) and (2) of the *Act* outlines the Special Rules for service of certain documents, including notices to end a tenancy and applications for monetary Orders. With respect to an application to end a tenancy and obtain an Order of Possession, the following provisions of section 89(2) of the *Act* are in place:

89 (2) *An application by a landlord under section 55 [order of possession for the landlord],... must be given to the tenant in one of the following ways:*

- (a) by leaving a copy with the tenant;...*
- (b) by sending a copy by registered mail to the address at which the tenant resides;*
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;*
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

The landlords' Proof of Service document regarding the 10 Day Notice stated the following:

J refuses to open door to me so when she was on other side, I slipped it under her door. We saw her grab it...

She also included a June 2, 2012 letter from the tenant to her confirming that "communication must be by leaving notes on each other's door, that is all I can handle now."

Although Landlord CV and her witness assert that they saw the tenant grab the 10 Day Notice, I am concerned as to how they could be certain that it was the tenant who took this Notice if the tenant's door were closed. As noted above, section 89(2) of the *Act* does not include placing an end to tenancy notice under a tenant's door as one of the permissible ways to serve a notice to end a tenancy.

Under these circumstances, I am not satisfied that the landlords have provided adequate evidence to establish that the 10 Day Notice was served in accordance with the *Act*. I also note that the landlords have not provided any documents that would prove the amount of rent owing (e.g., rent ledger, receipt book) in support of their assertion that rent is owing for this tenancy.

I am unable to consider in a Direct Request proceeding that the tenant has accepted that the tenancy ended on the effective date of the 10 Day Notice because of unpaid rent or that the 10 Day Notice was served to the tenant. I adjourn this application to be reconvened as a participatory hearing.

Conclusion

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing is required in order to determine the details of the landlord's application and whether service of the 10 Day Notice has occurred.

Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve, with all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 88 of the *Act*.

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 27, 2012

Residential Tenancy Branch