

DECISION

Dispute Codes OPR

Introduction

This matter was conducted by way of a Direct Request proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act* in response to an application made by the landlord for an Order of Possession for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request which declares that on July 18, 2012 the landlord served the tenant with the Notice of Direct Request Proceeding by posting it to the door of the rental unit. Section 90 of the *Act* provides that a document is deemed to have been served 3 days after posting. Based on the written submissions of the landlord, I find that the tenant has been served with the Notice of Direct Request proceeding requesting an Order of Possession and a monetary order.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on April 19, 2012 for a tenancy commencing on May 1, 2012, for the monthly rent of \$900.00 but does not indicate the day in the month that rent is payable;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which was issued on July 10, 2012, due to \$900.00 in unpaid rent that was due on July 1, 2010 (both pages of the 2-page form have been provided), however the effective date of vacancy of has not been filled in;
- A copy of a Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities that states that the tenant was served with the notice on July 10, 2012 by personally handing it to the tenant;
- The Landlord's Application for Dispute Resolution dated July 18, 2012 which states that the due date for rent is the 1st of the month; the tenant did not pay despite promises, and this is the second time; the document does not indicate

that any amount of rent is presently due, nor is there a monetary claim on the landlord's application.

Analysis

I have reviewed all documentary evidence and accept that the tenant was personally served with the notice to end tenancy on July 10, 2012 as declared by the landlord.

There is no indication in the documentary evidence provided by the landlord that the landlord is owed any specific amount of rent, or that there are presently any arrears of rent. The landlord has not made a monetary claim for unpaid rent.

The *Residential Tenancy Act* states that if a tenant fails to pay rent when it is due, the landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant has 5 days from the date of service to dispute the notice or pay the rent in full. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. In this case, the landlord has not completed the notice in full and consequently there is no effective date on the notice.

Further, the tenancy agreement is silent on what day in the month rent is payable. This is particularly important for a Dispute Resolution Officer to determine that rent is overdue and not paid when it is due. I also find that an error exists on the notice to end tenancy which states that the tenant failed to pay rent in the amount of \$1,000.00 that was due on July 1, 2010.

The landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities if rent is or remains unpaid, but must complete the form in its entirety. Also because the tenancy agreement is silent on the actual date that rent is payable, a request for an Order of Possession and/or a monetary order for unpaid rent or utilities would likely require a participatory hearing rather than an application under the Direct Request Process.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed.

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: July 20, 2012.

Residential Tenancy Branch