



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 July 20, 2012, at 12:15 p.m. the landlord personally served the female tenant with both copies of the Notice of Direct Request Proceeding package.

As the landlord did not serve the male tenant either via registered mail or personal delivery, I find that the monetary claim is dismissed with leave to reapply.

Based on the written submissions of the landlord, I find that the tenants have been served for the purposes of an application requesting an Order of possession.

Preliminary Matter

I note that the landlord's service address is now the same address as that of the rental unit. The tenancy agreement had indicated a different service address.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

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;
- A copy of a residential tenancy agreement which was signed by the parties on February 16, 2012, indicating a monthly rent of \$3,000.00 due each month, with no specific day of the month indicated; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on July 8, 2012, with a stated effective vacancy date of July 18, 2012, for \$2,700.00 in unpaid rent due on July 1, 2012.

Documentary evidence filed by the landlord indicates that the tenants failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery to the male tenant on July 8, 2012, at 5:30 p.m., with a witness

present. Service occurred at the rental unit address. The Act deems the tenants were served on the day of personal delivery.

The Notice states that the tenants had five days to pay the rent 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 tenants have been served with notice to end tenancy as declared by the landlord.

The Notice is deemed to have been received by the tenants on July 8, 2012.

I accept the evidence before me that the tenants failed to pay rent, as of the date the landlord made this application. However, in the absence of a day of the month that rent is due I am unable to determine if rent was due on the first day of the month or some other day in the month. The tenancy agreement supplied as evidence does not provide a specific first day of the rental period, upon which rent would be due each month.

Therefore, I find that the application is dismissed with leave to reapply. If rent remains unpaid beyond the last day of July, 2012, the landlord can then establish that July, 2012, rent has not been paid, as it is clear rent is due each month.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent has been served to the tenants effective July 8, 2012.

The application is dismissed with leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 23, 2012.

Dispute Resolution Officer
Residential Tenancy Branch