



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR

This matter proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of 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 which declares that on August 2, 2012, the landlord personally served the tenants with the Notice of Direct Request Proceeding.

Section 90 of the Act provides that a document served in this manner is deemed to have been received on that same day. Based on the written submissions of the landlord, I find that the tenants have been duly served with the Direct Request Proceeding documents.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order 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 Request Proceeding;
- A copy of the residential tenancy agreement which appears to have been signed by the parties on June 1, 2012, indicating that the tenants are obligated to pay \$1,300.00 in rent per month which is due and payable in advance "on the end of month day of each and every month during the tenancy" [underlining added];
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on July 16, 2012, with a stated effective vacancy date of July 26, 2012, for \$320.00 in unpaid rent which was due on "21/07/2012" [underlining added];

- There is no copy of the Proof of Service of the Notice to End Tenancy, even while there are indications on the 10 day notice itself and on the landlord's application that the notice was served in person on the tenants.

The Notice restates section 46(4) of the Act which provides that the tenants had 5 days to pay the rent in full or apply for Dispute Resolution. The tenants did not apply to dispute the Notice to End Tenancy within 5 days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

Analysis

While I am satisfied that the tenants were served with the Notice of Direct Request Proceeding, I am unable to proceed with the Application for Dispute Resolution for the following reasons:

- the unit rental address shown on the tenancy agreement and on the 10 day notice ("646 B") is different from the unit rental address shown on the landlord's application ("644 B");
- there is no Proof of Service of the Notice to End Tenancy included with the application;
- the date shown on the 10 day notice by when rent is due ("21/07/2012") is different from the time shown on the tenancy agreement by when rent must be paid ("on the end of month day....")

In the result, the landlord's application by way of Direct Request is adjourned and the matter will be considered by way of a participatory conference call hearing. The conference call hearing is scheduled to take place as follows:

9:30 a.m., Wednesday, September 12, 2012

Notices of hearing will be mailed to the landlord by the Branch. The landlord is responsible for serving the tenants within 3 days of receiving notification of the hearing date / time pursuant to the hearing notices.

Conclusion

I find that a participatory hearing is required in order to make findings arising from the landlord's application. Accordingly, I hereby order that the *ex parte* direct request proceeding be convened as a participatory conference call hearing in accordance with section 74 of the Act which speaks to **How the hearing may be conducted**.

Notices of reconvened hearing will be mailed to the landlord under separate cover. The notices, in addition to all other documents on which the landlord intends to rely, must be served by the landlord on the tenants within 3 days of receiving the notices of reconvened hearing.

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: August 13, 2012.

Residential Tenancy Branch