



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 an *ex parte* 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 declares that on July 28, 2012, the landlords sent both respondents the Notice of Direct Request Proceeding by registered mail. The landlords provided a copy of the Canada Post Tracking Numbers and the Customer Receipts to confirm these registered mailings. Based on the written submissions of the landlords and in accordance with sections 88 and 90 of the *Act*, I find that the respondents are deemed to have been duly served with the Direct Request Proceeding documents on August 2, 2012, the fifth day after their mailing.

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*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 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 Proceedings served to the respondents;
- A copy of a residential tenancy agreement between the male landlord and Tenant GG, indicating a monthly rent of \$800.00 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) sent to the respondents by registered mail on July 20, 2012 with a stated effective vacancy date of August 3, 2012, for \$2,400.00 in unpaid rent.

Documentary evidence filed by the landlords indicates that the respondents failed to pay all outstanding rent was served by sending the 10 Day Notice by registered mail on July

20, 2012. In accordance with section 88 and 90 of the *Act*, the respondents were deemed served with this 10 Day Notice on July 25, 2012, five days after its mailing.

The Notice states that the respondents had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and accept that the respondents have been deemed served with notice to end tenancy as declared by the landlords.

The landlords' 10 Day Notice was deemed to have been served to the respondents on July 25, 2012. The landlords applied for dispute resolution and notification of the direct proceeding on July 28, 2012, within the 5 day period allowed to the respondents to either pay the rent owed in full or apply for dispute resolution to contest the landlords' 10 Day Notice. I find that the landlords applied for dispute resolution by way of a direct request proceeding while the respondents still had time to take action to avoid ending their tenancy. The landlords have not filed any evidence with respect to the status of their 10 Day Notice at the end of the 5 day period following the respondents' deemed receipt of the landlords' 10 Day Notice. Under these circumstances, the landlords have filed their application for dispute resolution and their notice of direct request proceeding prematurely and without advising as to whether the respondents did in fact comply with their 10 Day Notice.

In addition, I note that the residential tenancy agreement entered into written evidence by the landlords identifies only a tenancy between the male landlord and Tenant Gord Green. Although the final page of this tenancy agreement indicated "IN WITNESS WHEREOF DT, GG affixed their signatures on this 03rd day of January, 2011" they provided no signature or final page to this tenancy agreement. Other than the landlords' application for dispute resolution and 10 Day Notice, there is no reference whatsoever to the second respondent identified in the landlords' application or any signed tenancy agreement.

For these reasons, I find that the landlords' application for dispute resolution by way of an ex parte direct request proceeding is insufficient. Due to the multiple deficiencies in their existing application, I dismiss the landlords' application for dispute resolution with leave to reapply.

Conclusion

I dismiss the landlords' application 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: August 03, 2012

Residential Tenancy Branch