



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DIRECT REQUEST DECISION

Dispute Codes : OPR, MNR

Introduction

The Hearing 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 rental arrears based on a Ten Day Notice to End Tenancy for Unpaid Rent .

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 8, 2012, the landlord served the tenant with the Notice of Direct Request in person.

Based on the written submissions of the landlord, I find the tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession and a monetary Order for rental arrears pursuant to 55 and 67 of the *Residential Tenancy Act (the Act)*. I have reviewed all documentary evidence.

Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a copy of the Notice to End Tenancy for Unpaid Rent dated August 1, 2012 indicating that the tenant was in arrears for \$575.00 rent due on August 1, 2012 and a "Proof of Service" form stating that the Notice was served to the tenant by leaving it personally with the tenant on August 1, 2012 at 12:30 p.m. in front of a witness.

The purpose of serving documents under the *Act* is to notify the person of a failure to comply with the Act and of their rights in response. The landlord, seeking to end the tenancy has the burden of proving that the tenant was served and I accept that the landlord has met this burden.

Analysis

Based on the evidence from the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent in person. The Notice was signed and served by the landlord on August 1, 2012, for arrears apparently due on August 1, 2012.

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

When a tenant fails to comply with section 26, then section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

In this instance, I find that the Ten Day Notice to End Tenancy for Unpaid Rent could not be issued until the tenant had violated section 26 of the Act by falling into rental arrears. I find that this violation could not occur under the tenancy agreement on the day rent was due on August 1, 2012 as the tenant would not be in rental arrears until August 2, 2012.

I therefore must find that the Ten Day Notice to End Tenancy for Unpaid Rent dated August 1, 2012 is not valid nor enforceable because it wrongfully indicated that the tenant was in rental arrears on August 1, 2012 when, in fact, the tenant was not yet in arrears at the time the Notice was signed and served.

In regard to the signature date on a Ten Day Notice to End Tenancy for Unpaid Rent, neither the Act nor the Residential Tenancy Rules of Procedure grant a dispute resolution officer any authority to retro-actively correct the Notice form with respect to date that it was actually issued or signed by the landlord.

I find that the landlord's notation stating that this Notice was intentionally issued and signed by the landlord earlier than allowed, regardless of the reason, is not a factor that would function to remedy the flawed Notice to make it effective.

I find that, although the tenant may have been in arrears the day after the Notice was signed, this particular Notice issued by the landlord on August 1, 2012 is not enforceable under the Act and the tenancy cannot be ended based on this Notice.

Accordingly I find that the landlord's application seeking an Order of Possession must be dismissed.

Conclusion

I hereby dismiss the landlord's application in its entirety without 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 09, 2012.

Residential Tenancy Branch