



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 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 September 19, 2012 the Landlord served the Tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act deems a document delivered in that manner to have been received (or served) on the fifth day after it was sent.

Based on the evidence and written submissions of the Landlord, I find that the Tenants were served as required by s. 89 of the Act 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 for unpaid rent and to a Monetary Order for unpaid rent pursuant to sections 46, 55 and 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted the following documentary evidence:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenants;
- A copy of a residential tenancy agreement which was signed by the parties on July 31, 2011 for a one year fixed term tenancy beginning on August 1, 2012 for the monthly rent of \$990.00 due in advance on the 1st day of the each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which was issued on September 4, 2012 with an effective vacancy date of September 14, 2012 due to \$420.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenants failed to pay the rent owed for the month of August, 2012 in full and that one of the Tenants was served in person on September 4, 2012 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 4, 2012. The Tenants did not apply to dispute the Notice to End Tenancy within five days.

Analysis

In support of the Direct Request application the Landlord filed a Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which states that another person, J.M., witnessed the Landlord's agent (or building manager) serve one of the Tenants with the 10 Day Notice. However, the proof of service requires that ***the relationship of the witness to the person serving the Notice must be indicated***, however the Landlord inserted "none." The reason for requesting this information is to have reliable corroborating evidence that the 10 Day Notice was served as alleged. The relationship may be that the witness is another tenant in the rental property or a friend of the person serving the Notice, for example; it does not have to be a relative of the person serving the Notice. Consequently, I find that more details are required before a determination can be made that the Tenants were served with the 10 Day Notice to End Tenancy as alleged by the Landlord.

Conclusion

Based on the foregoing I find that a conference call hearing is required in order to determine if the Tenants were served with the 10 Day Notice to End Tenancy as alleged. ***Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the Tenant within three (3) days of receiving this decision in accordance with section 88 of the Act.***

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: September 25, 2012.

Residential Tenancy Branch