



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 October 16, 2012 the Landlord served the Tenants with the Notices 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. However, this deeming provision may be rebutted with evidence to show that the Tenants could not reasonably have received it. For the reasons set out below, I find that this is an issue that requires further evidence before a finding can be made that the Tenants were served with the Notices of Direct Request Proceeding.

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 October 12, 2011 for a one year fixed term tenancy beginning October 1, 2011 and **expiring on September 30, 2012** for the monthly rent of \$895.00 due in advance on 1st day of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 4, 2012 with an effective vacancy date of October 17, 2012 due to \$895.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenants failed to pay the rent owed for the month of October 2012 and that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent on October 4, 2012 when it was left in a mail box. The Notice states that the Tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenants did not apply to dispute the Notice to End Tenancy within five days.

Analysis

Although s. 88 of the Act provides that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities may be served in a number of different ways, on a Direct Request Proceeding, it may only be served in one of three ways: in person, by registered mail or by posting it to the rental unit door. However, in his written submissions in support of the Direct Request application, the Landlord stated that he left a copy of the 10 Day Notice in the Tenant's *mail box*.

Furthermore, the Parties' tenancy agreement shows that the fixed term tenancy was to end on September 30, 2012. Consequently, if the tenancy ended at the end of the fixed term and the Notices of Direct Request Proceeding were served on the Tenants after this date to the rental unit address, then it is unlikely that the Tenants would have received it.

Conclusion

Based on the foregoing I find that a conference call hearing is required in order to obtain more evidence about the service of the Notices of Direct Request Proceeding and service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the Tenants 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: October 23, 2012.

Residential Tenancy Branch