



Dispute Resolution Services

Page: 1

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 *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 17, 2012 the landlord served both tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the written submissions of the landlord, I find that the tenants have been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

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, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on September 27, 2012 for a month to month tenancy for the monthly rent of \$850.00 due on the 1st of each month and a security deposit of \$425.00 was paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on October 2, 2012 with an effective vacancy date of October 11, 2012 due to \$850.00 in unpaid rent; and

- A copy of a receipt from the landlords to the tenants dated October 16, 2012 confirming the tenants paid the landlords \$420.00 for use and occupancy only.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the month of October 2012 and that the landlords served the 10 Day Notice to End Tenancy for Unpaid Rent to the tenant's friend on October 2, 2012 at 6:10 p.m. and that this service was witnessed by a third party and acknowledged by the friend when she signed the proof of service documents.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The tenants did pay \$420.00 on October 16, 2012.

Analysis

I have reviewed all documentary evidence and find that I am unable to determine if the tenants were served with the 10 Day Notice to End Tenancy for Unpaid Rent in accordance with Section 88 of the *Act*.

Section 88 stipulates that a document, such as a notice to end tenancy, which is required to be given to or served on a tenant must be given or served in one of the following ways:

1. By leaving a copy with the person;
2. By sending a copy by ordinary mail or registered mail to the address at which the person resides;
3. By sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
4. By leaving a copy at the person's resident with an adult who apparently resides with the person;
5. By leaving a copy in a mail box or mail slot for the address at which the person resides;
6. By attaching a copy to a door or other conspicuous place at the address at which the person resides; or
7. By fax to a fax number provided as an address for service.

Because the landlords do not identify if the friend is an adult and if the friend resides with the tenants because the Direct Request process does not allow an opportunity for

any oral testimony to be heard, I find the Direct Request process is not a suitable forum for the adjudication of the landlord's Application.

Conclusion

For the reasons noted above, I dismiss the landlords' Application with leave to reapply through a participatory hearing or through Direct Request process providing all the required information and evidence.

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