



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 *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 19, 2012 the landlord personally served the tenant with the Notice of Direct Request Proceeding at the rental unit, at 2:15 p.m. Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

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

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on September 19, 2012, indicating monthly rent of \$1,300.00 due on an undisclosed day of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 5, 2012; the Notice did not include an effective vacancy date.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay December 2012 rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by registered mail sent on December 5, 2012, to the rental unit address. A copy of the registered mail receipt and envelope was provided as evidence.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord.

The Notice is deemed to have been received by the tenant on December 10, 2012. The Notice did not include an effective vacancy date; however I have not made any finding in relation to the effect of the Notice.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*; however, in the absence of a rent due date on the tenancy agreement; I cannot determine that December rent is yet due.

Therefore, in the absence of evidence of the rent due date, I find that the application is dismissed with leave to reapply. The landlord may consider a participatory hearing so that the rent due date can be established.

Conclusion

The application is dismissed with leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 27, 2012.

Residential Tenancy Branch