



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 for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding for each named respondent declaring that on December 17, 2012 each named respondent was personally served with a Notice of Direct Request Proceeding at the rental unit. The Proof of Service was signed by a witness.

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

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and 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 Request for each tenant;
- A copy of a residential tenancy agreement which was signed by the female tenant on October 27, 2012, indicating a tenancy set to commence November 15, 2012 for a monthly rent of \$820.00 due on the 1st day of every month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 3, 2012 with a stated effective vacancy date of December 10, 2012, for \$410.00 in unpaid rent as of December 1, 2012;
- A copy of a Proof of Service of the 10 Day Notice indicating the landlord gave the 10 Day Notice to the male respondent on December 3, 2012 at 6:00 p.m. at the landlord's residence;

- A copy of a note signed by the female tenant dated December 13, 2012 confirming that she will fully vacated the unit by December 19, 2012; and,
- Copies of cheque stubs showing payment of the security deposit and one-half of the rent for the month of December 2012.

The 10 Day 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.

In the details of dispute the landlord states that only one-half of the rent was received for December 2012.

Analysis

Upon review of the tenancy agreement I note that the female respondent is the only tenant that signed the tenancy agreement. Therefore, only the female tenant is bound by the terms of the tenancy agreement and any other person residing in the unit is an occupant. I have amended the Application for Dispute Resolution accordingly.

In this case, the landlord indicated the 10 Day Notice was given to the male respondent whom I have found is not a tenant under the tenancy agreement. Section 88 provides for the acceptable ways a landlord may serve a Notice to End Tenancy upon a tenant. Acceptable methods of serving a Notice to End Tenancy include giving the Notice to the tenant in person, or, giving the Notice to an adult person that apparently resides with the tenant in person. I find I do not have sufficient evidence to determine whether the male person identified on the Proof of Service resides with the tenant and is an adult.

I further note that the landlord's husband signed the Proof of Service of the 10 Day Notice as a witness but did so in the space provided where a 10 Day Notice is posted on the door of the rental unit. Therefore, I find the witness's signature confirming service was done by posting to be inconsistent with the landlord's assertion that the 10 Day Notice was given in person.

For the above reasons, I find the documentation is insufficient to conclude the female tenant was sufficiently served with the 10 Day Notice in a manner that complies with the Act.

Proving service of a Notice to End Tenancy is critical as the purpose of serving a Notice is to put the other party on notice as to their breach, an opportunity to correct their breach, and to inform the other party of the consequences for failing to correct the breach.

Since this Application was made under the Direct Request procedure and based upon the landlord's written submissions only, the documentation must be sufficiently complete and clear in order to succeed.

Based upon the forgoing, I dismiss the landlord's application. The landlord's monetary claim is dismissed with leave to reapply.

Conclusion

The landlord's application has been dismissed due to insufficient proof of service of the 10 Day Notice in a manner that complies with the requirements of section 88 of the Act. The landlord's monetary claim is dismissed with 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: December 19, 2012.

Residential Tenancy Branch