



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 February 21, 2013 at 11:00 a.m. the landlord served the tenants with the Notice of Direct Request Proceeding by posting the notice on the rental unit door. Section 90 of the *Act* states a document sent by mail is deemed served on the 3rd day after it is posted.

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 for the purposes of the landlord's Application for an order of possession pursuant to the *Act*.

However, while Section 89(2) allows a landlord to post a an Application for Dispute Resolution and Notice of Direct Request Proceeding documents to the door of the rental unit if the landlord is seeking an order of possession Section 89(1) does not allow this method of service if the landlord is seeking a monetary order.

The Proof of Service document clearly outlines (in bold print) under the check box and blank line for the landlord to describe where the Notice of Direct Request Proceeding documents were posted "**Note: Do not use this method if requesting a Monetary Order.**"

As such, I find the landlord has failed to serve the tenants with the Notice of Direct Request Proceeding documents in accordance with the *Act* for the purposes of

obtaining a monetary order. I dismiss this portion of the landlord's Application with leave to reapply.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent, pursuant to Sections 46 and 55 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 July 2, 2012 for a 1 year fixed term tenancy beginning on July 1, 2012 for the monthly rent of \$1,500.00 due on the 1st of each month and a security deposit of \$750.00 and a pet damage deposit of \$250.00 were paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on February 11, 2013 with an effective vacancy date of February 24, 2013 due to \$1,500.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the month of February 2013 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on February 10, 2013 at 10:30 a.m.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and find the landlord's Proof of Service for the 10 Day Notice to End Tenancy for Unpaid Rent declares that he served the tenants with the 10 Day Notice to End Tenancy for Unpaid Rent on February 10, 2013. Yet the Notice itself is dated and signed by the landlord on February 11, 2013.

The landlord has provided no explanation how he could serve a document (the 10 Day Notice) the day before he signed the document. From this documentary evidence and because the Direct Request process does not allow an opportunity for me to question the parties involved in the dispute, I find the landlord has failed to provide sufficient

evidence to establish that he served the tenants with the 10 Day Notice for Unpaid Rent issued on February 11, 2013.

Conclusion

For the reasons noted above I dismiss the landlord's Application seeking an order of possession.

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: February 25, 2013

Residential Tenancy Branch