



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 (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 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 June 10, 2010 for a 12 month and 1 day fixed term tenancy beginning on June 1, 2010 for the monthly rent of \$2,000.00 and a security deposit of \$1,000.00 was paid. There is no indication in the tenancy agreement as to the due date of rent each month;

- A copy of a Notice of Rent Increase dated April 23, 2012 indicating that the landlord was raising the rent from \$2,046 to \$2,133.98 effective September 1, 2012. The landlord did not provide any copies of any previous Notice of Rent Increase; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on February 2, 2013 with an effective vacancy date of February 14, 2013 due to \$2,136.00 in unpaid rent. I note that there are several uninitialed alterations to the notice include the date signed by the landlord; the effective vacancy date; the date the rent was due; and how the document was served.

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 2, 2013 at 11:45 a.m. and that this service was witnessed by a third party.

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

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I have reviewed all documentary evidence and find that the tenancy agreement does not stipulate the date that rent is due and as such I am unable to determine, from the landlord's written submission, what the agreed upon due date for rent is. Therefore, I cannot determine if the landlord had the right to issue the Notice in accordance with Section 46, specifically if the unpaid rent was owed on a day after it was due.

Further, as the landlord has only included one Notice of Rent Increase with a base rent identified as \$2,046.00 when the tenancy agreement states that rent was \$2,000.00 I find I cannot determine, from the landlord's written submission, what the actual rent amount should currently be.

As such and because the landlord has made her Application through the Direct Request process that does not include an opportunity to ask either of the parties any questions, I find the landlord has failed to provide sufficient evidence to have her Application adjudicated through the Direct Request process.

Conclusion

For the reasons noted above, I dismiss the landlord's Application in its entirety with leave to reapply through the participatory hearing process.

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 27, 2013

Residential Tenancy Branch