



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 tenant to declare that on February 12, 2014 the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit. The landlord provided Canada Post receipts and tracking numbers as evidence of service. Section 90 of the Act determines that the documents are deemed to have been received five days later.

Based on the written submissions of the landlord, I find that the tenants 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, including the registered mail receipts;
- A copy of a residential tenancy agreement which was signed by the parties on November 26, 2012, indicating a monthly rent of \$1,550.00 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 February 2, 2013 with a stated effective vacancy date of February 12, 2013 for \$1,550.00 in unpaid rent as of February 1, 2013; and,
- A copy of a Proof of Service of the 10 Day Notice indicating the landlord gave a “friend” the 10 Day Notice on February 2, 2013 in the presence of a witness.

In the details of dispute the landlord states that the “friend” signed for the 10 Day Notice on February 2, 2013. The signature of the “friend” does not appear on any of the documents provided to me. Nor, is there any indication or evidence the friend is an adult who apparently resides with the tenants.

Analysis

The purpose of serving documents under the Act is to notify the person being served of their breach and the action being taken against them. When serving a tenant with a Notice to End Tenancy the landlord must serve the tenant in a manner that complies with section 88 of the Act.

A landlord may give a Notice to End Tenancy to someone other than the tenant, however, the person who receives the Notice to End Tenancy must be an adult who apparently resides with the tenant.

In this case, I find I was not provided any indication that person who received the 10 Day Notice was an adult who apparently resided with the tenants. Therefore, I find the landlord has failed to prove the tenants were sufficiently served with the 10 Day Notice.

In light of the above, I deny the landlord's requests for an Order of Possession based upon the 10 Day Notice issued February 2, 2013. The landlord is at liberty to issue another 10 Day Notice and properly serve it upon the tenants. The landlord's monetary claim is dismissed with leave to reapply.

Conclusion

The landlord failed to prove the tenants were served with the 10 Day Notice in a manner that complies with the Act and the landlord's request for an Order of Possession is denied. 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: February 19, 2013

Residential Tenancy Branch

