



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This matter was conducted by way of a Direct Request proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act* in response to an application made by the landlord for an Order of Possession for unpaid rent.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord submitted a signed Proof of Service of the Notice of Direct Request which declares that on January 21, 2013 the landlord served the tenant with the Notice of Direct Request Proceeding by personally handing it to the tenant. Based on the written submissions of the landlord, I find that the tenant has been served with the Notice of Direct Request proceeding requesting an Order of Possession and a monetary order. However, a copy of the Notice of Direct Request Proceeding that was served upon the tenant was not provided for consideration with this application.

The landlord also submitted the following evidentiary material:

- A copy of a portion of a residential tenancy agreement which does not include any signatures of the parties or the date that the agreement was entered into by the parties, for a tenancy commencing on February 1, 2012, for the monthly rent of \$750.00 payable on the 1st day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which was issued on January 3, 2013 with an effective date of vacancy of January 13, 2013, due to \$750.00 in unpaid rent that was due on January 2, 2013 (both pages of the 2-page form have been provided);

- A copy of a Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities that states that the tenant was served with the notice on January 3, 2013 by posting it to the door of the rental unit;
- The Landlord's Application for Dispute Resolution dated January 17, 2013 which states that the tenant has not paid the full amount of rent for the month of January, 2013, but does not indicate a balance owing to the landlord or a request for a monetary order for unpaid rent.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with the notice to end tenancy as declared by the landlord, which is deemed to have been received by the tenant on January 6, 2013, being 3 days after posting the notice to the door of the rental unit.

In the documents submitted by the landlord in this application, the landlord has not provided a copy of the Notice of Direct Request which the landlord declares was served on the tenant on January 21, 2013. Further, the evidentiary material does not include a signed tenancy agreement, but only a portion of an agreement between the parties without any evidence that the parties signed it or if so, when.

The Direct Request Process is an extraordinary remedy for a landlord to obtain an order because no hearing is conducted. As such, it is important that the landlord provide all evidence to substantiate the claim and that notice of such a claim has been appropriately served or delivered to the tenant. The documentation before me does not satisfy 2 elements required in order to obtain an Order of Possession by way of a Direct Request Proceeding, being the fact that the parties entered into a tenancy agreement on a specific date with signatures of the parties, and what the Notice of Direct Request indicated as notice to the tenant for this proceeding. The *Residential Tenancy Act* requires that as part of an application the landlord is required to serve to the tenant, and then submit as evidence in their application, a copy of all documentation served to the tenant.

Further, the landlord in this case has not applied for a monetary order for unpaid rent, and therefore, I am not satisfied that the tenant has not paid the outstanding rent.

Conclusion

For the reasons set out above, the landlord's application is hereby 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: January 30, 2013

Residential Tenancy Branch

