



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded 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 based on unpaid rent and a monetary Order for unpaid rent owed for June 2013.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 14, 2013, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail. The landlord provided a copy of the Canada Post Tracking Number to confirm this mailing.

Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on June 19, 2013, the fifth day after their mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant. According to the tenancy agreement, monthly rent was set at \$750.00, payable in advance on the 1st day of the month; and

- A copy of a 10 Day Notice posted on the tenant's door on June 2, 2013, with no stated effective vacancy date for \$750.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord stated that the 10 Day Notice was posted on the tenant's door at 4:00 p.m. on June 2, 2013. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed to have been served with this 10 Day Notice on June 5, 2013, the third day after its posting on her door.

The Notice states that the tenant had five days from the date of service to pay the amount identified as owing in full 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.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlords. The landlords' written evidence stated that the Proof of Service of the Notice of Direct Request document was sent to the tenant by registered mail on June 14, 2013.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. I am satisfied that the landlord is entitled to a monetary Order for unpaid rent owing from June 2013, in the amount of \$750.00. I issue a monetary Order to that effect.

I also find that the landlord's 10 Day Notice is critically flawed by the landlord's failure to identify any date for the 10 Day Notice to take effect. In this regard, the *Act* requires that notices to end tenancy must be issued by landlords using the proper form and content as set out in section 52 of the *Act*, which reads in part as follows:

52 In order to be effective, a notice to end a tenancy must be in writing and must...

(c) state the effective date of the notice,...

While the *Act* allows me to correct an effective date that is wrong, the *Act* does not permit me to introduce a new effective date when no date was identified by the landlord in the original 10 Day Notice. Under these circumstances, I find that the landlord's 10 Day Notice does not meet with the requirement of section 52(f) of the *Act*. For this reason, I dismiss the landlord's 10 Day Notice without leave to reapply. Should the landlord wish to seek an end to this tenancy for unpaid rent, the landlord must issue a new 10 Day Notice and take care to identify an effective date for the tenancy to end.

Conclusion

I dismiss the landlord's application for an end to this tenancy and an Order of Possession based on the 10 Day Notice of June 2, 2013, without leave to reapply.

I issue a monetary Order in the landlord's favour in the amount of \$750.00 for unpaid rent owing for June 2013. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: June 21, 2013

Residential Tenancy Branch

