



Dispute Resolution Services

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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 deals 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 which declares that on August 15, 2013, the Landlord personally served the Tenant with Notice of Direct Request Proceeding. Based on the written submissions of the Landlord, I find that the Tenant has been duly served with the Direct Request Proceeding Documents.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a monetary order 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 Proceeding;
- A copy of a residential tenancy agreement which was signed by the Parties on February 18, 2013, indicating a tenancy start date of February 28, 2013 and a monthly rent of \$4,200.00 due monthly. The tenancy agreement does not indicate which day of the month the rent is due;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on August 6, 2013 with a stated effective vacancy date of August 6, 2013, automatically corrected to August 19, 2013 for \$3,200.00 in unpaid rent; and
- A copy of the Proof of Service of the Notice to End Tenancy showing that the Landlord served the Notice to End tenancy to the Tenant on August 6, 2013 by posting the Notice on the Tenant's door.

The Notice states that the Tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end from the service date. The Tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Given that the only evidence of the date that rent is payable is the tenancy agreement and considering that the tenancy agreement requires a monthly payment but does not indicate any particular day on the month that rent is payable, I can only find that rent is due no later than the last day of each month. As such, I find that the Landlord could not give the Tenant a notice to end tenancy for unpaid August 2012 rent prior to August 31, 2013 and that as the Landlord gave the notice prior to this date the Notice is invalid and of no effect. I therefore I dismiss the Landlord's application.

Conclusion

The Landlord's application is dismissed.

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: August 28, 2013

Residential Tenancy Branch

