



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 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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 30, 2013 the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the written submissions of the landlord, I find that the tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on February 14, 2013 for a tenancy beginning March 01, 2013 for the monthly rent of \$1,590.00 due on the 1st of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on June 10, 2013 with an effective vacancy date of June 23, 2013 due to \$1,880.00 in unpaid rent.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, August 14, 2013 with an effective vacancy date of July 28, 2013 due to \$2,240.00 in unpaid rent.
- A copy of the rent ledger showing the outstanding amounts of rent for July and August, 2013 of \$2,240.00.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the full rent owed for the months of July and August and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent which was served to the tenants baby sitter who appeared to be over 19 years of age.

Analysis

The landlord submitted a copy of the Application for Dispute Resolution which provided that the Notice to End Tenancy dated August 14, 2013 was served to the tenant's baby sitter who appears to be over 19 years old. Section 88 (e) of the *Act* states that a landlord may serve a tenant by leaving a copy at the person's residence with an adult who apparently resides with the person.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The landlord is seeking to end the tenancy due to this breach; however, the landlord has the burden of proving that the tenant was served with the 10 Day Notice to End Tenancy.

The landlord has provided no evidence to show that the tenant's baby sitter resides with the tenant and therefore the landlord has not met the burden of proof that service has taken place as specified under s. 88 of the *Act*.

Regarding the 10 Day Notice to End Tenancy that was served to the tenant on June 10, 2013; although proof of service has been provided for that Notice, the landlord has provided no proof that the money accepted after June 10, 2013 was accepted for use and occupancy only. Therefore the landlord has reinstated the tenancy after the June 10 Day Notice was served upon the tenant and that Notice would subsequently no longer have any merit.

Conclusion

Having found that the landlord has failed to service the 10 Day Notice in accordance with s. 88 of the *Act*, I have determined that this application be 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: September 10, 2013

Residential Tenancy Branch

