



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding in which the Landlord declared that on October 28, 2013 the Landlord posted the Notice of Direct Request Proceeding at the rental unit. Based on the written submissions of the Landlord, I find the Tenant has been served with the Dispute Resolution Direct Request Proceeding documents in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent, pursuant to section 55 of the *Act*?

Background and Evidence

I have reviewed the following evidence submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant
- A copy of a residential tenancy agreement that appears to be signed by the Tenant, which indicates that the tenancy began on September 01, 2013 and that the rent of \$795.00 is due by the first day of the month
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by an agent for the Landlord and is dated October 05, 2013 which declares that the Tenant has not paid rent of \$795.00 that was due on October 01, 2013. The Notice does not declare the date by which the Tenant must vacate the rental unit, which is commonly referred to as the effective date of the Notice.

- A copy of Proof of Service of the 10 Day Notice to End Tenancy, in which an agent for the Landlord declared that the Agent for the Landlord posted the Notice on the Tenant's door on October 05, 2013, in the presence of an employee, who also signed the Proof of Service.

On the Application for Dispute Resolution, the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was posted on the door on October 05, 2013 and that the Tenant has not responded to the Notice.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement, in which the Tenant agreed to pay monthly rent of \$795.00 by the first day of each month and that the Tenant did not pay the rent when it is due on October 01, 2013.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the rent is due by giving a notice to end tenancy. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was posted at the rental unit on October 05, 2013.

Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(c) of the *Act* stipulates that to be effective a notice to end tenancy must declare the effective date of the notice to end tenancy. As the Notice to End Tenancy that was posted on the Tenant's door on October 05, 2013 did not declare the effective date of the Notice, I find that the Notice to End Tenancy was not effective.

Conclusion

As the Notice to End Tenancy that was posted on the Tenant's door on October 05, 2013 was not effective, I dismiss the Landlord's application for an Order of Possession.

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: November 04, 2013

Residential Tenancy Branch

