



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kekinow Native Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

This matter proceeded by way of an *ex parte* 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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that at 8:57 a.m. on October 16, 2013, the landlord served the tenant with the Notice of Direct Request Proceeding by posting it on the tenant’s door.

Section 89(2) of the *Act* allows a landlord to serve notice of an application for dispute resolution seeking an Order of Possession for unpaid rent by posting it on a tenant’s door. Based on the landlord’s written evidence and pursuant to sections 89(2) and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents in which the landlord applied to end this tenancy for unpaid rent on October 19, 2013, the third day after its posting.

Section 89(1) of the *Act* outlines the methods by which a party can serve notice of an application for a monetary award to a respondent. Section 89(1) of the *Act* does not allow for service of an application for a monetary award by posting a notice on a tenant’s door. Based on the landlord’s written evidence, I find that the landlord’s Direct Request Proceeding documents in which the landlord applied for a monetary Order have not been served to the tenant in accordance with section 89(1) of the *Act*. As such, I dismiss the landlord’s application for a monetary award with leave to reapply.

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*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on January 30, 2013, indicating a monthly economic rent for this subsidized tenancy of \$1,236.00, due on the 1st day of the month;
- Documentation that would indicate that the tenant's current portion of the monthly economic rent is set at \$358.00 per month, due on the 1st day of the month;
- A monthly rent ledger for this tenancy showing the amounts owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) with a stated effective vacancy date of October 12, 2013, for \$358.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay all rent owed and was served the 10 Day Notice by handing it to Nathaniel P. (an adult visitor to the rental unit with the same last name as the tenant), at 3:26 p.m. on October 2, 2013. The landlord submitted a Proof of Service document in which Nathaniel P. signed as having received the 10 Day Notice.

The Notice states that the tenant had five days from the date of service to pay the rent 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

Section 88 of the *Act* outlines the methods by which documents, including a 10 Day Notice, can be served to a party. Section 88(e) of the *Act* would appear to be the section employed by the landlord in the delivery of the 10 Day Notice to Nathaniel P. on October 2, 2013. Section 88(e) of the *Act* allows a 10 Day Notice to be served to a tenant "by leaving a copy at the person's residence with an adult who apparently resides with the person." The landlord's application for dispute resolution identified Nathaniel P. as "an adult visitor" who is "not on Profile but generally at address." Based on this information and despite the Proof of Service document signed by Nathaniel P., I am not satisfied that the landlord has established that the adult who received the 10 Day Notice "apparently resides with the person" as is required by section 88(e) of the *Act*. In fact, the landlord has only identified Nathaniel P. as "an adult visitor", which I believe implies that he does not reside at the rental unit with the tenant. As such, I find

that the landlord has not served the 10 Day Notice in accordance with section 88 of the *Act*.

For these reasons, I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice with leave to reapply should the landlord serve the tenant with the 10 Day Notice in accordance with the *Act*. In coming to this finding, I emphasize that I have made no finding on the merits regarding the content of the landlord's current 10 Day Notice. My sole reason for dismissing the landlord's application for an Order of Possession is the landlord's failure to serve the tenant with the 10 Day Notice in a way prescribed by section 88 of the *Act*.

Conclusion

I dismiss the landlord's application for an Order of Possession based on the existing 10 Day Notice with leave to reapply. The landlord also remains at liberty to serve another 10 Day Notice to the tenant in accordance with section 88 of the *Act* if there remains unpaid rent owing for October 2013.

I dismiss the landlord's application for a monetary Order 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: October 21, 2013

Residential Tenancy Branch

