



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes

OPR, MNR

Introduction

This matter was conducted 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 and a Monetary Order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 25, 2013, at 11:13 a.m., the Landlord hand delivered the Notice of Direct Request Proceeding to the female at the rental unit.

Preliminary Matter

Section 89 of the Act provides the methods of service for an application for an Order of Possession and a Monetary Order. Section 89 states:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

(a) by leaving a copy with the tenant;

(b) by sending a copy by registered mail to the address at which the tenant resides;

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(3) A notice under section 94.21 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

Therefore, I find that the Landlord duly served both of the Tenants for the purpose requesting an Order of Possession. I further find that the Landlord duly served the female Tenant for the purpose of requesting a Monetary Order, but not the male Tenant.

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding;
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent;
- A copy of a residential tenancy agreement which was signed by the parties on August 14, 2013, indicating a monthly rent of \$1,450.00; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 2, 2013, with a stated effective vacancy date of November 11, 2013, for \$1,450.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the rent remains unpaid. The documentary evidence indicates that the Landlord served the 10 Day Notice to End Tenancy for Unpaid Rent by posting the document to the Tenants' door on November 2, 2013, at 10:00 a.m. The Landlord also provided a copy of a note from another person

indicating that on November 2, 2013 at 10:00 a.m., he saw that the Notice to End Tenancy had been removed from the door.

The Direct Process procedure does not allow for questions to be asked of the parties. Decisions are made based on documentary evidence only.

The tenancy agreement indicates that the tenancy began on August 15, 2013 for a term of one year, ending August 15, 2014. The Tenancy Agreement states,

“The tenant will pay the rent of \$1450.00 each month to the landlord on the first day of the rental period which falls on **the _____ day of each day** subject to rent increases given in accordance with the RTA.” [my emphasis added]

I find that the tenancy agreement is not clear with respect to when rent is due. Therefore, I find that it is not possible to determine whether or not the Notice to End Tenancy is a valid notice, as it may be that rent was not yet due on the date that it was issued and served.

I adjourn this matter to a participatory Hearing, where questions can be asked and answered with respect to when rent is due.

Three copies of a Notice of Reconvened Hearing accompany this Interim Decision. The Landlord must serve the female Tenant with a copy of the Notice of Reconvened Hearing in accordance with the provisions of Section 89 (2) of the Act within 3 days of receipt of this Interim Decision.

If the Landlord intends to proceed with a request for a Monetary Order against the male Tenant, she must serve him separately with the Notice of Reconvened Hearing, together with all documents that were provided to the female Tenant on November 25, 2013.

Conclusion

This matter is adjourned to a participatory Hearing, to the date and time noted on the enclosed Notice of Reconvened Hearing. **The Landlord must serve the female Tenant with the Notice of Reconvened Hearing in accordance with the provisions of Section 89 (2) of the Act within 3 days of receipt of this Interim Decision.**

If the Landlord intends to proceed with a request for a Monetary Order against the male Tenant, she must serve him separately with the Notice of Reconvened Hearing, together with copies of all documents that were provided to the female Tenant on November 25, 2013.

This interim 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 29, 2013

Residential Tenancy Branch

