



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 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 on October 29, 2013, the landlord handed copies of the Notice of Direct Request Proceeding to the tenants. Based on the written submissions of the landlord, I find that the tenants have been duly served with the Direct Request Proceeding documents.

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*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 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 Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on September 20, 2013, indicating a monthly rent of \$850.00 due on the 1st day of the month; and

- A copy of an undated 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) handed to the male tenant on October 23, 2013, with a stated effective vacancy date of November 2, 2013, for \$850.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the tenants failed to pay all outstanding rent was served by handing the 10 Day Notice to the male tenant at 10:40 a.m. on October 23, 2013. In accordance with section 88 of the *Act*, the tenants were served with this 10 Day Notice on October 23, 2013.

The Notice states that the tenants 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 tenants did not apply to dispute the Notice to End Tenancy within five days from the date of service.

In the Details of the Dispute in the landlord's application for dispute resolution, the landlord stated that the tenants paid \$500.00 towards their October 2013 rent on October 20, 2013. The landlord maintained that this left \$350.00 still owing as of October 29, 2013.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been deemed served with notice to end tenancy as declared by the landlord. The landlord's written evidence stated that the Proof of Service of the Notice of Direct Request documents were sent to the tenants by registered mail on October 27, 2013.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. I am satisfied that the landlord is entitled to a monetary Order for unpaid rent owing from October 2013, in the amount of \$350.00. I issue a monetary Order to that effect.

I also find that the landlord's 10 Day Notice is critically flawed by the landlord's failure to identify any date when the 10 Day Notice was issued. In this regard, the *Act* requires that notices to end tenancy must be issued by landlords using the proper form and content as set out in section 52 of the *Act*, which reads in part as follows:

52 In order to be effective, a notice to end a tenancy must be in writing and must...

(a) be signed and dated by the landlord or tenant giving the notice,...

While section 53 of the *Act* allows me to correct an effective date that is clearly wrong, the *Act* does not permit me to introduce a new date when no date was identified by the landlord in the original 10 Day Notice. Under these circumstances, I find that the landlord's 10 Day Notice does not meet with the requirement of section 52(a) of the *Act*. For this reason, I dismiss the landlord's 10 Day Notice without leave to reapply. Should the landlord wish to seek an end to this tenancy for unpaid rent, the landlord must issue a new 10 Day Notice and take care to sign **and** date the Notice.

Conclusion

I dismiss the landlord's application for an end to this tenancy and an Order of Possession based on the 10 Day Notice that was to have taken effect on November 2, 2013, without leave to reapply.

I issue a monetary Order in the landlord's favour in the amount of \$350.00 for unpaid rent owing for October 2013. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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

