



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 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 for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 18, 2013, the landlord served the respondents with the Notice of Direct Request Proceeding via registered mail. Canada post tracking numbers were provided as evidence.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later.

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

The issues to be decided are whether the landlord are entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 46, 55 and 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 Proceeding for the respondents;
- A copy of a residential tenancy agreement which was signed by the parties(BC) and (LK) on August 4, 2010, indicating a monthly rent of \$1,950.00 due on the first day of the month;
- A mutual agreement dated October 28, 2011, reducing rent from \$1,950.00 to \$1,550.00 effect November 1, 2011;and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 1, 2013, with a stated effective vacancy date of November 14, 2013, for \$1,550.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants had failed to pay all rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door on November 1, 2013. Section 90 of the Act deems the tenants were served on November 4, 2013.

The Direct Request process is a mechanism that allows the landlord to apply for an expedited decision, with that the landlord must follow and submit documentation exactly as the Act prescribes; there can be no omissions or deficiencies with items being left open to interpretation or inference.

The landlord has filed a copy of the tenancy agreement; however, the respondent (TW) is not listed as a tenant on the tenancy agreement. As a result, I am unable to determine if the (TW) is a tenant or merely an occupant who has no legal rights or obligations under the tenancy agreement.

Under Section 46 (1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

In this case, the notice to end tenancy was issued and served on November 1, 2013, the day rent is due under the terms of the tenancy agreement. As a result, I find the landlord issued the notice to end tenancy prematurely as it was not issued on any day after the day rent is due, such a November 2, 2013. As a result, I find the notice to end tenancy for nonpayment, issued on November 1, 2013, is invalid and is of no force or effect.

The landlord is at liberty to serve the tenant with a new notice to end tenancy for nonpayment of rent, if the rent remains unpaid.

Under these circumstances, I dismiss the landlord's application 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: November 25, 2013

Residential Tenancy Branch

