



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.

Service of Application for Dispute Resolution and Notice of Direct Request Proceedings

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 31, 2013, the landlords’ agent served the tenant with the Notice of Direct Request Proceeding by handing it to the tenant’s nephew and by posting the Notice on the tenant’s door.

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

As set out below, section 89(1) of the *Act* outlines how an application for a monetary Order can be served to a Respondent:

89(1) An application for dispute resolution,...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 document]...*

The landlords have not served the tenant in a manner required by section 89(1) of the *Act*. As I am not satisfied that the tenant was properly served with the landlords' Notice of Direct Request Proceeding including a copy of the landlords' application for dispute resolution in accordance with section 89(1) of the *Act*, I dismiss the landlords' application for a monetary Order with leave to reapply.

Section 89(2) of the *Act* establishes the following Special Rules for serving documents to a tenant in a landlord's application for an Order of Possession:

89 (2) *An application by a landlord under section 55 [order of possession for the landlord],... 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].

In this case, the landlords (or their agent acting on their behalf) have not provided evidence that the tenant's nephew who was apparently handed the Notice of Direct Request Proceedings package is an adult who resides with the tenant. While that method of service delivery does not meet the requirements of section 89(2)(c) of the *Act*, I find that the posting of the Notice of Direct Request Proceedings, including the application for dispute resolution, on the tenant's door at 9:00 a.m. on December 31, 2013 does meet the requirements of section 89(2)(d) of the *Act*. As such and in accordance with sections 89(2) and 90 of the *Act*, I find that the tenant was deemed served with that portion of the landlords' application relating to the request for an Order of Possession on January 3, 2014, the third business day after its posting on the tenant's door. On this basis, I can consider the landlords' application for an Order of Possession.

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 landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;
- A copy of the Residential Tenancy Agreement (the Agreement) which was signed by the landlords and the tenant on December 14, 2013, indicating a monthly rent of \$1,200.00 due on the 1st day of the month, commencing on January 1, 2014; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) of December 22, 2013, with a stated effective vacancy date of January 2, 2014, for \$1,200.00 in unpaid rent, allegedly owing as of December 20, 2013.

Documentary evidence filed by the landlords indicates that the tenant failed to pay all rent identified as owing in the 10 Day Notice after the tenant signed for receiving the 10 Day Notice at 6:30 p.m. on either December 22, 2013 or December 23, 2013.

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 landlords maintain that the tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence.

In this case, I find that the Agreement submitted into written evidence by the landlords only called for the payment of rent to the landlords as of January 1, 2014. However, the landlords issued the 10 Day Notice before any monthly rent was owing on December 22, 2013. By way of explanation, the landlords have provided a copy of a text message, which they alleged was evidence that the tenant had moved into the rental unit by December 15, 2013, without paying them \$1,200.00 in rent that the landlords maintained was owing as of December 22, 2013.

From the confusing and unclear evidence provided by the landlords, it would appear that the landlords decided on December 20, 2013, to charge the tenant for rent prior to the official commencement date of the Agreement. Even if the parties entered into some type of oral agreement whereby extra rent was to have been paid for the period before the Agreement took effect, monthly rent for December 2013 would only have been one-half of the \$1,200.00 monthly rent and not the \$1,200.00 identified as owing

for rent as of December 20, 2013 on the landlords' 10 Day Notice. It would appear that the landlords may have incorrectly included a portion of the security deposit in the amount of unpaid rent shown as owing in the 10 Day Notice. Security deposit or pet damage deposits cannot be included as unpaid rent on a 10 Day Notice, and form no basis for ending a tenancy for unpaid rent.

Since the Agreement entered into written evidence only required the tenant to commence paying rent on January 1, 2014, I find that the landlords' 10 Day Notice showing \$1,200.00 owing as of December 20, 2013 is invalid and of no force or effect. I dismiss the landlords' application for an Order of Possession based on the 10 Day Notice of December 22, 2013, without leave to reapply. If monthly rent became owing as of January 1, 2014, the landlords are free to serve a new 10 Day Notice to the tenant and pursue whatever remedies are available to them under the *Act*.

Conclusion

I dismiss the landlord's application for an Order of Possession based on the existing 10 Day Notice without leave to reapply. The 10 Day Notice of December 22, 2013 is invalid and is of no force or effect. This tenancy continues.

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: January 09, 2014

Residential Tenancy Branch

