



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR Limited Partnership
and [tenant name suppressed to protect privacy]

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 deals with an Application for Dispute Resolution by the Landlord for:

1. An Order of Possession – Section 55; and
2. A Monetary Order for unpaid rent – Section 67.

Preliminary Matter

The Landlord provides a proof of service indicating that the Landlord served the Tenant with the Notice of Direct Request Proceeding by posting it on the door on March 7, 2014. Section 89 of the Act provides as follows on service requirements:

(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*].

While the Landlord's method of service is valid for the purposes of the order of possession, as the Landlord served the application by posting it on the door, I find that the Landlord has not accomplished service in relation to the monetary claim for unpaid as required under the Act and I dismiss this claim with leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

In the Application made March 7, 2014 the Landlord indicates that the Tenant owes arrears for September 2013 rent and has failed to abide by the agreement for repayment. No other details of that agreement were provided.

The Landlord provides a copy of the tenancy agreement indicating that the tenancy started on August 12, 2010 and that rent of \$665.00 is payable monthly on the first day of each month. The Landlord provides a copy of a 10 day notice to end tenancy for

unpaid rent of \$805.84, dated November 13, 2013, with a proof of service indicating that the Notice was served on the Tenant by posting the door on the same day. The Landlord further indicates that the Tenant has continued to pay ongoing rent as due. The Landlord provides a ledger indicating regular payments of \$680.00 noted to be the rent payments made by the Tenant since service of the Notice. No copies of rent increases were provided. No copies of receipts issued for the ongoing rent payments indicating acceptance for "use and occupancy only".

Analysis

Section 55 of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. Section 46 of the Act provides that a tenant may, within 5 days after receiving a notice to end tenancy for unpaid rent, pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. If a tenant does not pay the rent or make an application to dispute the notice, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the unit by the effective date of the notice. However where a Landlord accepts rent after the effective date of the notice to end tenancy, a reinstatement of the tenancy may be determined based on the evidence of the Parties in relation to intention. Where a tenancy is reinstated, a notice to end tenancy is no longer of any effect.

As I have only the Landlord's evidence to consider and based on the evidence provided by the Landlord, it appears more likely than not, that the tenancy was reinstated on the basis of an agreement for the repayment of arrears. The Landlord's request for an order of possession is therefore dismissed based on the resulting invalidity of the Notice given in November 2013. The Landlord is at liberty to reissue another notice to end tenancy and make another application based on the reissued notice to end tenancy.

Conclusion

The application in relation to the order of possession is dismissed. The application in relation to unpaid rent is dismissed 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: March 21, 2014

Residential Tenancy Branch

