



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Realty Executives Vantage
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 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 March 21, 2014, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail.

Section 90 of the Act determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents.

Issues to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding;
- A copy of a residential tenancy agreement which was signed by the parties on October 23, 2010, indicating that the tenant is obligated to pay \$550.00 in rent in advance on the first day of the month;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") which the landlord served on the tenant on March 4, 2014 for \$1,100.00 in unpaid rent; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice on the tenant by posting the notice to the door of the rental unit.

Section 90 of the Act provides that because the Notice was served by posting, the tenant is deemed to have received the Notice 3 days later on March 7, 2014.

The Notice restates section 46(4) of the Act which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

The tenancy agreement provides that the tenant is only obligated to pay \$550.00 per month in rent, yet the Notice alleges that the tenant owes \$1,100.00 in rental arrears. The landlord provided no accounting ledger showing whether the tenant owed money for months other than the month of March.

In order to be successful in their application, the landlord must prove the amount of rent that was owing at the time the Notice was served. I find that the landlord has failed to meet that burden. It is unclear to me whether the \$1,100.00 in rental arrears represents several months or whether the landlord had at some point imposed a substantial and possibly illegal rent increase, raising the rent from \$550.00 per month to \$1,100.00 per month.

Although I am satisfied that the tenant received the Notice, I am not satisfied that the tenant was legally obligated to pay \$1,100.00 in rent in the month of March or that he had arrears for other months and therefore I am not satisfied that the Notice is valid.

For this reason, I dismiss without leave to reapply the claim for an order of possession based on the Notice. The landlord is free to serve on the tenant another notice which clearly outlines the rental arrears and the months in which rent is owed and may enforce that notice if required.

I dismiss with leave to reapply the claim for a monetary order.

Conclusion

The claim for an order of possession is dismissed without leave to reapply and the monetary claim 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: April 24, 2014

Residential Tenancy Branch

