



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 April 9, 2014, the landlord handed the tenant the Notice of Direct Request Proceeding. Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the tenant has been served with the Direct Request Proceeding documents on April 9, 2014, as claimed by the landlord.

The landlord has provided written proof in the form of a signed and witnessed Proof of Service Document attesting to the landlord’s service of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by posting it on the tenant’s door at 6:45 p.m. on April 2, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice posted on the tenant’s door on April 2, 2014 was deemed served to the tenant on April 5, 2014, the third day after its posting. Although the landlord’s Proof of Service Document also claimed that the 10 Day Notice was handed to the tenant on April 2, 2014, the tenant did not sign for receipt of that Notice, nor did a witness sign as having watched the landlord hand the 10 Day Notice handed to the tenant. Under these circumstances, I find that the only valid service of the 10 Day Notice that the landlord has proven was the one posted on the tenant’s door, deemed served on April 5, 2014.

As is noted on the 10 Day Notice and pursuant to section 46(4) and (5) of the *Act*, a tenant receiving a 10 Day Notice has until the fifth day after being served with that Notice to pay the rent identified as owing in full or file an application for dispute resolution to dispute the 10 Day Notice.

In this case, I find that the landlord’s application for dispute resolution and Notice of Direct Request Proceeding were filed with the Residential Tenancy Branch during the 5-

day period when the tenant could still have paid the rent identified as owing in full or could have filed an application to cancel the 10 Day Notice. As I find the landlord's application premature, I dismiss the landlord's application with leave to reapply.

Conclusion

I dismiss the landlord's application with leave to reapply once the time period for complying with the directions provided on the 10 Day Notice have expired.

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 10, 2014

Residential Tenancy Branch

