



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 June 10, 2014, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on June 16, 2014, the fifth business day after their registered mailing.

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*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 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 Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on June 22, 2013, indicating a monthly rent of \$900.00 due on the 1st day of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) sent to the tenant by courier on May 23, 2014, with a stated effective vacancy date of April 2, 2014, for \$1,186.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay all outstanding rent was served by sending the 10 Day Notice to the tenant by courier on May 23, 2014.

Analysis

As outlined below, section 88 of the Act establishes the following methods by which a landlord can serve a tenant with a notice to end tenancy.

88 *All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a

landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];

(j) by any other means of service prescribed in the regulations...

Since the landlord's service of the 10 Day Notice by courier is not one of the permitted ways of serving a document, I find that the landlord has not served the 10 Day Notice in accordance with section 88 of the *Act*. I dismiss the landlord's application for an end to this tenancy and issuance of an Order of Possession on the basis of the 10 Day Notice of May 22, 2014.

I have also considered the landlord's application for a monetary award of \$1,186.00. While there may in fact be rent owing from this tenancy, I find that the landlord has submitted insufficient information to consider this application for a monetary award. The landlord stated in the Details of the Dispute section of the application for dispute resolution that \$236.00 in rent was owing from April 2014, and \$950.00 for each of May 2014 and June 2014. However, the Residential Tenancy Agreement entered into written evidence indicated that the monthly rent for this tenancy was set at \$900.00. The landlord did not provide a rent ledger or summary of payments made by the tenant during this tenancy. Under these circumstances and as additional rent may very well be owing beyond that stated in the application for dispute resolution, I dismiss the landlord's application for a monetary award with leave to reapply.

Conclusion

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice of May 22, 2014, without leave to reapply. The 10 Day Notice of that date is of no force or effect. If rent remains owing and the landlord wishes to obtain an Order of Possession for unpaid rent, the landlord will need to issue a new 10 Day Notice and properly serve it to the tenant in accordance with section 88 of the *Act*.

I dismiss the landlord's application for a monetary award 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: June 16, 2014

Residential Tenancy Branch

