



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DIRECT REQUEST DECISION

Dispute Codes : OPR, MNR

Introduction

The Hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order for rental arrears.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 7, 2014, the landlord served the tenant with the Notice of Direct Request in person.

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

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a monetary Order for rental arrears pursuant to 55 and 67 of the *Residential Tenancy Act (the Act)*?

Background and Evidence

The landlord submitted a copy of the 10-Day Notice to End Tenancy for Unpaid Rent dated June 2, 2014 and a "Proof of Service" form stating that the Notice was served to the tenant in person June 2, 2014 on August 15, 2012 at 9:30 a.m. in front of a witness.

Also submitted into evidence was a mutual agreement to end the tenancy dated June 28, 2014 signed by both parties terminating the tenancy by consent effective July 2, 2014.

Analysis

The landlord's application filed on July 7, 2014 indicated that the tenant owed \$825.00 in rental arrears for May and June 2014. The Ten Day Notice to End Tenancy for Unpaid Rent dated June 2, 2014 indicates that the tenant owes \$1,225.00.

The Direct Request process is available for applications to terminate a tenancy based on a Ten Day Notice to End Tenancy for Unpaid Rent under section 46 of the Act.

However, I find that the landlord is not ending this tenancy under section 46 of the Act because, after the Ten Day Notice to End Tenancy for Unpaid Rent was served, the parties subsequently made a mutual agreement to end the tenancy choosing to the tenancy under section 44(1)(c). This section allows a landlord and tenant to terminate the tenancy contract by agreeing in writing to end the tenancy.

I find that because the Direct Request proceeding can only be used for an application made under section 46 of the Act and cannot be utilized to seek for an Order of Possession based on a mutual agreement the matter before me cannot proceed through the ex-parte process.

For this reason, I find I must dismiss the landlord's application and I do so with leave to reapply for a regular participatory hearing.

Based on the evidence, I hereby dismiss the landlord's application with leave to reapply.

Conclusion

The landlord is not successful in the application and it is dismissed with leave to reapply because the Direct Request process cannot be utilized to deal with an application based on a Mutual Agreement to End Tenancy.

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: July 23, 2014

Residential Tenancy Branch

