



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

Introduction

The landlord applied for an Order of Possession and a Monetary Order for unpaid rent under the Direct Request Procedure, pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act").

The landlord identified two respondents in filing this Application for Dispute Resolution; however, upon review of the tenancy agreement I note that only one named tenant signed the tenancy agreement. Since the female respondent did not sign the tenancy agreement I find the female respondent does not have privity of contract and I have excluded her as a party to this proceeding.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 13, 2014 the landlord served the Notice of Direct Request Proceeding and supporting documents to the tenant by registered mail sent to the rental unit. The landlord provided a registered mail receipt, including tracking number, as proof of service. Section 90 of the Act deems a person to have received documents five days after mailing. Based on these submissions I find that the tenant have been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and monetary compensation for unpaid rent?

Background and Evidence

The landlord submitted copies of the following evidentiary material:

- A residential tenancy agreement which was signed by the landlord and the male respondent on February 16, 2014, indicating a six month fixed tenancy commenced March 1, 2014 for the monthly rent of \$1,325.00 due on the 1st day of every month;

- A Monetary Order worksheet indicating the tenant paid \$545.00 in rent on August 2, 2014 and failed to pay the balance of \$780.00;
- A 10 Day Notice to End Tenancy for Unpaid Rent which was issued on August 5, 2014 with a stated effective vacancy date of August 15, 2014, for \$780.00 in unpaid rent as of August 1, 2014; and
- A Proof of Service of the 10 Day Notice indicating the landlord gave the 10 Day Notice to the female respondent on August 5, 2014.

The landlord does not indicate whether the female respondent is an adult person who resides with the tenant.

Analysis

A landlord must serve a 10 Day Notice upon a tenant in a manner that complies with section 88 of the Act and must be able to prove service occurred in one of the permissible ways. Since a Direct Request procedure is based upon written submissions of the landlord only, the landlord's submission must be sufficiently complete and valid in order to succeed.

It would appear as though the landlord considers the female respondent a tenant; however, the tenancy agreement provided for my review does not support that position. Section 88 of the Act does permit a landlord to give a 10 Day Notice to an adult person who resides with the tenant; however, I was not provided any evidence to suggest the female respondent is an adult who resides with the tenant. Therefore, I am unable to conclude that the 10 Day Notice was served in a manner that complies with the Act and I am unable to proceed with this application.

In light of the above, I dismiss the landlord's application with leave to reapply.

Conclusion

The landlord failed to demonstrate that the 10 Day Notice was served in a manner that complies with the Act and I have dismissed this application 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: August 20, 2014

Residential Tenancy Branch

