



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR

This matter 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 unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 12, 2014, the landlord served the tenants with the Notice of Direct Request Proceeding by way of Registered Mail.

Section 90 of the Act provides that a document served in this manner is deemed to have been received on the 5th day after service. Based on the written submissions of the landlord, I find that the tenants have 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 the residential tenancy agreement which was signed by the parties on December 01, 2010, indicating that the tenants are obligated to pay \$650.00 in rent in advance on the first day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on August 01, 2014, with a stated effective vacancy date of August 10, 2014, for \$650.00 in unpaid rent effective July 31, 2014, and
- A copy of the Proof of Service of the Notice to End Tenancy showing that the landlord personally served the notice to end tenancy on the tenants on August 01, 2014.

The Notice restates section 46(4) of the Act which provides that the tenants had 5 days to pay the rent in full or apply for Dispute Resolution. The tenants did not apply to dispute the Notice to End Tenancy within 5 days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

Analysis

Section 46 of the Act speaks to **Landlord's notice: non-payment of rent**, in part:

46(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

In the circumstances of this tenancy, while the tenancy agreement provides that rent is due and payable in advance on the first day of each month, the 10 day notice documents that rent was not paid when due on July 31, 2014.

Further, the notice to end tenancy may be given on any day after rent is due. In this case, once again, rent is due on the first day of each month and yet the notice was also issued on that same date, which is August 01, 2014.

Conclusion

Following from all of the above, the landlord's application must be 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: August 19, 2014

Residential Tenancy Branch

