



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21 Ace Agencies Ltd Re: Alexandra Villa
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 28, 2014 at 3:29 p.m. the landlord's agency and apartment building served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

In the Proof of Service document when asked for the full name of the person who served these documents the applicant has named the agency and the apartment building.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on August 26, 2010 for a month to month tenancy beginning on September 10, 2010

for the monthly rent of \$850.00 due on the 1st of each month and a security deposit of \$425.00 was paid;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 8, 2014 with an effective vacancy date of August 17, 2014 due to \$426.50 in unpaid rent; and
- Copies of 3 receipts for payment of portions of rent:
 - Typewritten receipt dated August 8, 2014 – payment of \$100.00 received;
 - Typewritten receipt dated August 18, 2014 – payment of \$200.00 received; and
 - Handwritten receipt dated August 15, 2014 – payment of \$200.00 “towards August occupancy only.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the month of August 2014 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by the agency and building hand delivering the notice to the tenant on August 8, 2014 at 11:50 p.m. and that this service was acknowledged by the tenant when she signed the proof of service document.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

Analysis

Direct Request proceedings are conducted when a landlord issues a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the tenant(s) has not filed an Application for Dispute Resolution seeking to cancel the Notice within 5 days of receiving the Notice. The proceeding is conducted *ex parte* and based solely on the paperwork provided by the applicant landlord.

Because the hearing is conducted without the benefit of having a participatory hearing in which I might question either of the parties if something is unclear in the paperwork all documents submitted must be complete and clear.

In the case before, because the landlord has failed to name the person who served the tenant with both the 10 Day Notice to End Tenancy for Unpaid Rent and the Notice of Direct Request Proceeding I find I cannot determine if any of the documents were served in accordance with the *Act*.

In addition the landlord has provided copies of receipts issued to the tenant after the 10 Day Notice to End Tenancy for Unpaid Rent was issued that total more than the amount of rent that was identified in the 10 Day Notice or as the amount of the landlord's claim. As such, I find I cannot determine how much, if any rent is owed to the landlord.

As such, I find that this Application is not suitable for adjudication through the Direct Request process as it has been submitted.

Conclusion

Based on the above, I dismiss this Application for Direct Request with leave to reapply either through the Direct Request process again with suitable documentation to allow it to be adjudicated or through the participatory Dispute Resolution process.

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: September 02, 2014

Residential Tenancy Branch