



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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The female landlord (the landlord) submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 9, 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(1) and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents seeking a monetary Order on October 14, 2014, the fifth day after their registered mailing.

The landlord also declared that she posted the Proof of Service of the Notice of Direct Request Proceeding documents on the tenant’s door on October 9, 2014. She provided a witnessed statement to that effect. Based on the written submissions of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents seeking an Order of Possession on October 12, 2014, the third day after their posting.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords 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 one of the landlords and the tenant on April 4 and 5, 2013, indicating a monthly rent of \$950.00, due on the 1st day of the month for a tenancy commencing on May 1, 2013;
- A Notice of Rent Increase document showing that the tenant's monthly rent increased to \$970.00 as of September 1, 2014;
- Various documents showing that the female landlord has power of attorney with respect to the affairs of the male landlord;
- A Monetary Order Worksheet showing the rent owing for the month of October 2014; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenant's door on October 3, 2014, with a stated effective vacancy date of October 17, 2014, for \$970.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the tenant failed to pay all outstanding rent was served by posting the 10 Day Notice to the tenant's door at on October 3, 2014, after the tenant refused to accept hand delivery of this document from the landlord. In accordance with sections 88 and 90 of the *Act*, the tenant was deemed served with this 10 Day Notice on October 6, 2014, three days after its posting.

The Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been deemed served with notice to end tenancy as declared by the landlord.

Based on the landlord's written evidence, I find that the landlord applied for dispute resolution and served the tenant with the Notice of Direct Request Proceeding, including a copy of the application for dispute resolution, on October 9, 2014. However, the landlord's application was initiated within the five-day period following the deemed service of the 10 Day Notice to the tenant on October 6, 2014. Under these circumstances, I find that the landlord's application was premature. I make this finding because the tenant had until October 11, 2014 to abide by the provisions of section 46

of the *Act* and either pay the overdue rent in full or dispute the notice by making her own application to cancel the 10 Day Notice.

For these reasons, I dismiss the landlord's application for dispute resolution with leave to reapply. If the tenant did not pay the rent identified as owing in the 10 Day Notice to the landlord in full or apply to cancel that Notice within five days of being deemed to have received the 10 Day Notice on October 6, 2014, the landlord is at liberty to submit a new application for dispute resolution, either through the Direct Request process or by way of a participatory hearing. If the landlords choose to submit a new application, they will need to re-submit all of the required information to enable an Arbitrator appointed under the *Act* to consider their new application.

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: October 15, 2014

Residential Tenancy Branch

