



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.

Service of Application for Dispute Resolution and Notice of Direct Request Proceedings

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 21, 2014, the landlords sent the tenant a copy of the Notice of Direct Request Proceeding including a copy of the landlords’ application for dispute resolution by registered mail. The landlords attached the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. In accordance with sections 89 and 90 of the *Act* and the landlords’ written evidence, I find that the tenant was deemed served with the above documents on October 26, 2014, the fifth day after its registered mailing.

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 a monetary Order for unpaid rent?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;
- A copy of the Residential Tenancy Agreement (the Agreement) which was signed by the landlords and the tenant on October 17, 2011, indicating a monthly rent of \$650.00 due on the 1st day of the month, commencing on November 1, 2011;
- A copy of two 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notice) of October 14, 2014 (one on a 2005 RTB form, another on the current RTB form), with a stated effective vacancy date of October 24, 2014, for \$1,200.00 in unpaid rent, allegedly owing as of October 14, 2014;

- A signed Proof of Service document and a notarized statement from the female landlord attesting to her service of one of the 10 Day Notices entered into written evidence (i.e., the Notice on the 2005 form) by handing it to the tenant on October 14, 2014 at 6:00 p.m.;
- Many other documents relating to this tenancy, the relevance of which to the application before me is for the most part unclear.

Documentary evidence filed by the landlords indicates that the tenant failed to pay all rent identified as owing in the 10 Day Notice within five days of having received one of the 10 Day Notices handed to the tenant on October 14, 2014. 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. The landlords maintain that the tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence.

In this case, the landlords provided written evidence that they could not access the current 10 Day Notice issued on the Residential Tenancy Branch (RTB) website when they were planning to prepare that Notice. Rather than providing the tenant with a 10 Day Notice using the current RTB form, they issued the tenant with a 10 Day Notice using a form prepared by the RTB in 2005. Although this form has much of the same information as is included in current RTB forms, there are some differences between the forms. The landlords also attached a copy of a 10 Day Notice produced using the current RTB website. However, they attached a letter explaining that they did not serve this current version of the relevant RTB form to the tenant.

While I may have been able to overlook the landlords' use of an old RTB form, which might be considered to comply with the requirements of section 52 of the *Act*, the landlords have also failed to provide a Proof of Service from any witness who observed the service of the 10 Day Notice using the old form to the tenant. Based on the landlords' evidence, it would appear that there is no witness to the female landlord's alleged handing of the 10 Day Notice to the tenant through a partially opened door and her shoving of this Notice through the door opening as the tenant was closing the door after refusing to accept it. For a non-participatory hearing of this nature, any notice provided by hand to a Respondent has to be witnessed. A signed witness statement needs to be included on the Proof of Service document(s) for those applications submitted through the RTB's Direct Request process.

The landlords' evidence also reveals a number of other issues arising out of this tenancy, including allegations that there is some form of written notice from the tenant to end this tenancy. The landlords also attached unrelated documents regarding other issues in dispute which could not be addressed through an ex parte hearing using the RTB's Direct Request Process.

Under these circumstances, I find that the landlords have not demonstrated to the extent required that anyone other than the female landlord has witnessed her service of a properly created and current 10 Day Notice to the tenant. Providing a signed statement from a witness is particularly important in a case such as this, given the circumstances surrounding whether the Notice was actually handed to the tenant as claimed by the landlord. Under these circumstances, I dismiss the landlords' application for an Order of Possession using the existing 10 Day Notice without leave to reapply.

Conclusion

I dismiss the landlords' application for an Order of Possession based on the existing 10 Day Notice without leave to reapply. The 10 Day Notice of October 14, 2014 is invalid and is of no force or effect. This tenancy continues. As the landlords' application relies at least in part upon the service of the 10 Day Notice, I dismiss the landlord's application for a monetary Order with leave to reapply.

Should the landlords wish to reapply they may need to serve a new Notice to End Tenancy to the tenant using the current RTB form for doing so. If they intend to utilize the Direct Request process to seek an end to this tenancy, they may wish to consult with an RTB staff member to obtain more information regarding the methods by which a 10 Day Notice can be served to a tenant using that 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: October 30, 2014

Residential Tenancy Branch

