



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 November 13, 2014 the landlord served each 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.

Based on the written submissions of the landlord, I find that each tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

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 February 11, 2014 for a 1 year and 1 day fixed term tenancy beginning on February 15, 2014 for the monthly rent of \$4,000.00 due on the 15th of each month and a security deposit of \$2,000.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on October 17, 2014 with an effective vacancy date of October 27, 2014 due to \$10,000.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the months of August, September and October 2014 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent. The landlord has submitted a Proof of Service document that states the landlord the notice was served by attaching a copy on the door or other conspicuous place. The Proof of Service document goes on to say that the documents were "left inside the unit by AG" on October 10 and October 17 with photos taken. The Proof of Service document also states that the landlord had witness AG observe the landlord serve the Notice to End Tenancy to both tenants in person on September 24, 2014.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants 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 Application for Direct Request before me the landlord states on the Proof of Service Document for the Notice to End Tenancy that it was served to the tenants on both October 10 and October 17, 2014.

However, the Notice to End Tenancy is dated October 17, 2014. As such, it is unclear to me how or why the landlord was able to serve a Notice to End Tenancy to the tenants 7 days before it was even issued by the landlord.

While the landlord has provided photographs of the notice, the photographs do not show where the notice was attached or if it was a conspicuous place.

In addition the same Proof of Service document indicates that the Notice to End Tenancy issued by the landlord on October 17, 2014 was also served to both tenants personally on September 24, 2014.

As a result, I cannot determine if the Notice to End Tenancy was served to the tenants on September 24, 2014; October 10, 2014; or October 17, 2014 or how it was served, either in person and directly to both tenants or by attaching it to a door or conspicuous place.

Therefore, I find that the landlord's Application for Direct Request is not suitable to be adjudicated through the direct process, as it is.

Conclusion

Based on the above I dismiss the landlord's Application for Direct Request with leave to reapply through the direct request process with evidence that does not conflict or through the participatory hearing 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: November 19, 2014

Residential Tenancy Branch

