



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coldwell Banker Prestige Realty
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 November 18, 2014 the landlord served the female tenant only 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 the female tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

As the landlord did not serve the male tenant with copies of their Application for Direct Request I find that the landlord did not serve the male tenant with notice of this Direct Request proceeding.

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 June 15, 2012 for a 3 year fixed term tenancy beginning on July 1, 2012 for the monthly rent of \$1,400.00 due on the 3rd of each month and a security deposit of \$700.00 and a pet damage deposit of \$700.00 were paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on October 20, 2014 with an effective vacancy date of October 30, 2014 due to \$1,400.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the month of October 2014 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on October 20, 2014 at 5:22 p.m. and that this service was witnessed by a third party. However, the party serving the 10 Day Notice to End Tenancy for Unpaid Rent did not sign the Proof of Service document confirming that he or she had served the Notice.

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. As the person who served the 10 Day Notice to End Tenancy for Unpaid Rent

In the case before the landlord has not provided any proof that the male tenant was served with the notice of this Direct Request Proceeding and because this proceeding was conducted without the benefit of a participatory hearing I cannot determine if the landlord would want to proceed against the female tenant only.

In addition, I find the person serving the 10 Day Notice to End Tenancy for Unpaid Rent did not sign the Proof of Service document confirming that they did serve either tenant with the Notice to End Tenancy. Again, I cannot question the parties to this dispute because there was no participatory hearing.

For these reasons I find the landlord's Application is not suitable to be adjudicated through the direct request process as it has been submitted.

Conclusion

Based on the above, I dismiss the landlord's Application for Direct Request with leave to reapply either through the participatory hearing process or by filing an Application for

Direct Request that is complete and provides sufficient information and evidence to be adjudicated without a participatory hearing.

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 25, 2014

Residential Tenancy Branch

