



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of 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 landlord for an order of possession and a monetary order for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 26, 2014, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail.

Section 90 of the Act determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding;
- A copy of a residential tenancy agreement which was signed by the parties on July 31, 2013, indicating that the tenant is obligated to pay \$795.00 in rent in advance on the first day of the month;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") which the landlord served on the tenant on November 3, 2014 for \$815.00 in unpaid rent due in the month of November; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice on the tenant by posting the Notice to the door of the rental unit.

Section 90 of the Act provides that because the Notice was served by posting, the tenant is deemed to have received the Notice 3 days later on November 6, 2014.

The Notice restates section 46(4) of the Act which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

The landlord bears the burden of proving the amount of rent that is due, that the tenant failed to pay that rent and that the tenant was served with a notice to end tenancy which accurately laid out the tenant's rights and obligations. The evidence of the landlord shows that the tenant is obligated to pay \$795.00 per month in rent, but the Notice demands that the tenant pay \$815.00 in order to cancel the Notice. The landlord did not submit a notice of rent increase showing that the rent was legally increased from \$795.00 to \$815.00 and the Monetary Order Worksheet provided by the landlord shows that the landlord expected \$815.00 in rent for the month of November and does not reflect any arrears from previous months. I am unable to find that the tenant owed \$815.00 in the month of November as the landlord has failed to submit evidence to prove this.

In the absence of evidence showing that the tenant was obligated to pay \$815.00 in rent for the month of November, I find that the Notice misled the tenant into believing that in order to cancel the Notice, he was required to pay more than the \$795.00 in rent which he was contractually obligated to pay. I find that this flaw is fatal to the Notice and I find that it cannot therefore be effective to end the tenancy. I order that the Notice be set aside and of no force or effect. The landlord's claim for an order of possession based on this Notice is dismissed. The landlord is free to issue another notice to end tenancy which accurately reflects the amount of rent due and should the landlord choose to file another application for an order of possession, the landlord should present evidence proving the amount of rent that is due and should ensure that this amount is accurately reflected on the new notice to end tenancy.

As it is clear that some amount of rent is payable for the month of November, I find it appropriate to dismiss the monetary claim with leave to reapply.

Conclusion

The claim for an order of possession is dismissed. The claim for a monetary order for rent owing for November 2014 is dismissed with leave to reapply.

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: December 04, 2014

Residential Tenancy Branch

