



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 December 16, 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 October 17, 2014, indicating that the tenant is obligated to pay \$750.00 in rent in advance on the tenth 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 December 10, 2014 for \$600.00 in unpaid rent due in the month of December; 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 December 13, 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

In order to establish his claim for an order of possession, the landlord must prove that the tenant failed to pay rent on the date it was due, that a notice to end tenancy was served on the tenant no sooner than the day after the rent was due and that the tenant failed to either pay the rental arrears or dispute the notice to end tenancy. The landlord's evidence shows that the Notice was posted on the door of the rental unit on the 10th day of the month, the same day the tenancy agreement states that the rent was due. I find that because the landlord did not wait until the rent was overdue to post the Notice to end tenancy, he is not entitled to an order of possession. I therefore dismiss that claim. If rent remains unpaid, the landlord is free to serve another notice to end tenancy.

As for the monetary claim, the landlord's request for a monetary order seems to indicate that \$600.00 per month was payable for rent for both July and December despite the fact that the tenancy agreement states that \$750.00 per month is payable. No explanation for this discrepancy was provided. I find it more likely than not that the parties have at some point agreed to change their tenancy agreement and without further explanation by the landlord, I am unsure as to whether other terms of the agreement, particularly around the payment of rent, were also changed. I therefore decline to issue a monetary order and I dismiss the claim for a monetary order with leave to reapply.

Conclusion

I dismiss *without* leave to reapply the claim for an order of possession and I dismiss *with* leave to reapply the claim for a monetary order.

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 30, 2014

Residential Tenancy Branch

