



Dispute Resolution Services

Page: 1

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; it declared that on January 7, 2015, the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail.

The tenant is deemed to have been served with the Notice of Direct Request Proceeding on the fifth day after it has been mailed. Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary order for unpaid rent and if so, in what amount?

Background and Evidence

The landlord submitted the following documents:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;

- A copy of a residential tenancy agreement which was signed by the parties on September 23, 2014, providing for a monthly rent of \$550.00 due on the first day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was dated December 12, 2014 with a stated effective vacancy date of January 2, 2015, for \$1,650.00 in unpaid rent.

The tenant was served with the Notice to End Tenancy by posting to the door of the rental unit on December 19, 2014. The Notice to End Tenancy did not name the respondent as tenant. The Notice to End Tenancy named the landlords as tenants of the rental unit and the tenant was not mentioned in the Notice to End Tenancy.

Analysis and conclusion

The Residential Tenancy Policy Guideline with respect to Direct requests provides that:

The possible outcomes of a direct request hearing are:

- Order of Possession because the tenant has not paid rent;
- Order of Possession because the tenant has not paid rent and Monetary Order for unpaid rent;
- adjourned, with the hearing reconvened as a participatory hearing;
- dismissed with leave to reapply; and,
- dismissed without leave to reapply.

With respect to the last item the Guideline states that:

Dismissed Without Leave to Reapply

The Residential Tenancy Branch may dismiss, without leave to reapply, an application made through the Direct Request process when a landlord fails to prove their claim or the evidence indicates the landlord would not be successful in any event. For example, when there is an error which invalidates the 10-Day Notice to End Tenancy. In this example, the landlord would have to issue a new valid 10-Day Notice to End Tenancy. If the tenant did not respond to the new valid notice, the landlord could submit a new application through the direct request or conventional dispute resolution process

A direct request proceeding is conducted without an oral hearing. Because there is no hearing to allow the parties to correct or amend defective documents and to allow the

arbitrator to determine whether the respondent has been misled by the defective document, an exacting standard is applied to the direct request process. The Notice to End Tenancy does not refer to the tenant; I find that the Notice to End Tenancy is misleading and invalid, I dismiss the landlords' application for an order for possession without leave to reapply. If there is currently unpaid rent due to the landlords they will have to serve a new 10 day Notice to End Tenancy for unpaid rent. The landlords' application for a monetary order 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: January 16, 2015

Residential Tenancy Branch

