



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* 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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 19, 2014, the landlords sent the tenant the Notice of Direct Request Proceeding by registered mail. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on December 24, 2014, the fifth day after their registered mailing.

Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords 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, indicating a monthly rent of \$800.00, due on the 1st day of the month for a tenancy commencing on February 1, 2014;
- A Monetary Order Worksheet showing the rent owing during this tenancy;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (“10 Day Notice”), with a stated effective vacancy date of December 19, 2014, for \$900.00 in unpaid rent and \$996.56 in unpaid utilities;
- A copy of the Proof of Service of the 10 Day Notice.

Witnessed documentary evidence filed by the landlords indicate that the tenant failed to pay all outstanding rent, was served by posting the 10 Day Notice to the “only entrance to residence,” as per the landlord’s documentary evidence.

The Notice states that the tenant had five days from the date of deemed service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of deemed service.

Analysis

In reviewing the landlords’ application, I find that there are a number of errors and incorrect information that do not enable me to approve their application on the basis of the direct request process, which is a non-participatory hearing.

In the landlords’ tenancy agreement, there are three landlords named. Different landlords appear on the 10 Day Notice and the proofs of service forms, with only one landlord on each of these documents. The agreement was only signed by two of the three landlords. The agreement was signed by one landlord on February 1, 2014, and another landlord on the 22nd day of an unclear month. The agreement was signed on January 22, 2014 by the tenant.

On the first page of the landlords’ Proof of Service of the 10 Day Notice, the landlords indicate that they served the notice on December 12, 2014. On the second page of the form, the witness to the posting indicates that the 10 Day Notice was served on December 7, 2014 and the witness statement is also signed on December 7, 2014. Therefore, the exact date of service of the 10 Day Notice, is unclear.

As the 10 Day Notice was posted to the door of the tenant’s residence, if it was served on December 12, 2014, then the tenant would be deemed served on December 15, 2014, the third day after its posting (as per sections 88 and 90 of the *Act*). The tenant would then have had five days after this deemed service on December 15, 2014, to either pay the rent identified as owing in full, or apply for dispute resolution. Therefore, the tenant would have until December 20, 2014, to pay the rent or make an application. The landlords’ application for dispute resolution was dated December 19, 2014 and was received by the Residential Tenancy Branch on the same date. In other words, the landlords signed the application for dispute resolution and submitted that application to the Residential Tenancy Branch within the five-day time period. The landlords did not amend the application and provided no evidence to update the status of any payments made by the tenant between the date when the application was signed and submitted and the end of the five day period provided to the tenant for paying the outstanding

rent. The landlords stated that rent was unpaid for December 2014 but no reference is made as of December 20, 2014, since the tenant had until the end of the day to pay rent or file an application. As such, I find that the landlord's application for an Order of Possession on the basis of non-compliance with the 10 Day Notice was premature, based on the December 12, 2014 service date.

If the tenant was served with the 10 Day Notice on December 7, 2014, which is also indicated on the proof of service, then she is deemed served on December 10, 2014, and she had until December 15, 2014 to pay the rent in full. In that situation, the landlords would not have filed their application prematurely on December 19, 2014.

On the 10 Day Notice itself, the landlords crossed out the methods of service of the notice, that they originally checked off including "on the door" and "in person" and then they circled "on the door." Further, the effective vacancy date on the 10 Day Notice is indicated as December 17 and December 19, and then both dates are crossed out and then December 19, 2014 is rewritten again. Therefore, the 10 Day Notice was altered by the landlords and it is not clear when this was done. Once entered into written evidence by the landlords, the 10 Day Notice became the basis for legally ending this tenancy and cannot be altered.

The 10 Day Notice indicates that rent in the amount of \$900.00 was due on December 1, 2014. However, the tenancy agreement indicates that rent in the amount of \$800.00 is due on the first day of each month. The landlords did not provide any explanation for this \$100.00 rent difference, they did not provide any legal notices of rent increase or any documentary evidence of any agreements by the tenant to pay \$900.00 in rent. In their monetary worksheet, the landlords indicated that \$900.00 was due on December 1, 2014, but that they are only seeking \$800.00 for this rent.

The landlords also claim for unpaid utilities due on November 13, 2014, as per their monetary worksheet and the 10 Day Notice. However, the written demand to the tenant, dated November 13, 2014, indicates different utility amounts than that on the monetary worksheet. The written demand does not indicate a specific due date for the utilities. The landlords have not provided any utility bills or a proof of service of the written demand, as required, with their Application. Further, if the written demand for utilities was served upon the tenant on November 13, 2014 (although there is no proof of service of this fact) and the 10 Day Notice was served on December 7 or 12, 2014, these time periods are not 30-day demand periods as required by section 46 of the *Act*, in order to treat these unpaid utilities as unpaid rent. The total monetary order sought by the landlords is \$1,896.56, but this calculation is incorrect if the landlords are only seeking \$800.00 for unpaid rent and not \$900.00.

Due to the above-noted deficiencies, I find that the landlords' 10 Day Notice is invalid. I dismiss the landlords' application for an Order of Possession based on the 10 Day Notice, dated December 7, 2014, without leave to reapply. Accordingly, the landlords' 10 Day Notice, dated

December 7, 2014, is cancelled and of no force or effect. This tenancy continues until it is ended in the accordance with the *Act*.

For the above reasons, I dismiss the landlords' application for a monetary Order with leave to reapply.

I note that the landlords were cautioned about many of the above deficiencies in their Application when they attended to file their Application at the Residential Tenancy Branch, but chose to proceed with their Application in any event.

Conclusion

I dismiss the landlords' application for an Order of Possession based on the 10 Day Notice, dated December 7, 2014, without leave to reapply. The landlords' 10 Day Notice, dated December 7, 2014, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The landlords' application for a monetary Order is dismissed with leave to reapply.

Given the deficiencies identified above, I would suggest that the landlords give serious consideration to submitting any future application for dispute resolution regarding this tenancy by way of a participatory hearing and not the Residential Tenancy Branch's direct request 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: January 30, 2015

Residential Tenancy Branch

