



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMACON PROPERTY MANAGEMENT SERVICES INC.
and [tenant name suppressed to protect privacy]

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 landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which did not clearly establish the date on which the Notice of Direct Request Proceeding was served to the tenant, as the form does not indicate the date of service. The landlord indicates that the Notice of Direct Request Proceeding was sent to the tenant by way of registered mail. The landlord has provided copies of a Canada Post receipt, and registered mail slip that includes a tracking number. The Canada Post receipt indicates that the registered mail service was paid for on January 21, 2015. The tracking number, when entered into the tracking service provided on the Canada Post website, indicates that the service for this package was initiated on January 21, 2015. Accordingly, I find that the landlord attempted service of the Notice of Direct Request Proceeding on January 21, 2015, and that the tenant was deemed served on January 26, 2015, five days after the registered mailing, as provided by section 90 of the *Act*.

Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of the residential tenancy agreement signed in July 2008 indicating a monthly rent of \$620.00;

- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question;
- A copy of Notice of Rent Increase form dated June 19, 2009;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) served to the tenant by way of posting to the door of the rental unit on December 2, 2014 with a stated effective vacancy date of December 12, 2014, for \$3,100.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the tenant failed to pay all outstanding rent was served by posting the 10 Day Notice to the tenant's door on December 2, 2014. In accordance with sections 88 and 90 of the *Act*, the tenant was deemed served with this 10 Day Notice on December 5, 2014, three days after its posting.

The Notice states that the tenant had five days from the date of 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 service.

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding.

If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

Section 52 of the *Act* provides the following with respect to a notice to end tenancy:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The 10 Day Notice includes an incorrect address for the rental unit, which effectively gives notice to the tenant to move out of an address that is not the correct address of the rental unit as established in the tenancy agreement. I find this sufficiently invalidates the 10 Day Notice. Therefore, I find the 10 Day Notice is not in accordance with section 52 of the *Act*.

As a result of the above-noted deficiency, I dismiss the landlord's application for an Order of Possession without leave to reapply. It remains open to the landlord to issue a new 10 Day Notice if the landlord so wishes.

Given the error in the landlord's 10 Day Notice, I also dismiss the landlord's application for a monetary Order for unpaid rent with leave to reapply.

Conclusion

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice of December 12, 2014 without leave to reapply.

I dismiss the landlord's application for a monetary Order 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: February 3, 2015

Residential Tenancy Branch

