



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 27, 2015, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had the tenant and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89, I find that the tenant has been duly served with the Direct Request Proceeding documents on February 27, 2015, the day it was personally served to them.

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*?

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 tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on November 25, 2014, indicating a monthly rent of \$1,465.00, due on the first day of the month for a tenancy commencing on December 01, 2014;
- A copy of a Tenant Ledger showing the rent owing and paid during this tenancy; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 20, 2015 with a stated effective vacancy date of March 05, 2015, for \$1,490.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was handed to an adult who apparently resides at the unit at 1:30 p.m. on February 20, 2015. The 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in accordance with Section 88 of the *Act*.

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71

(1) *[director's orders: delivery and service of documents]*;

(j) by any other means of service prescribed in the regulations.

On the first page of the Proof of Service Notice to End Tenancy, the landlord has indicated that they handed the 10 Day Notice to an adult who apparently lives with the tenant. In the Special Details section though, the landlord writes: "Left a copy with Mike, Mike was at home visiting Tyler".

As the Act does not allow for the 10 Day Notice to be left with an adult who is visiting the tenant, I find that the 10 Day Notice has not been served in accordance with Section 88 of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of February 20, 2014, without leave to reapply. The 10 Day Notice of February 20, 2014 is cancelled and of no force or effect.

For the same reasons, I dismiss the landlord's application for a monetary Order with leave to reapply.

The landlord must reissue the 10 Day Notice and serve it in one of the ways prescribed by Section 88 of the *Act* or according to Residential Tenancy Policy Guideline #39 if the landlord wants to apply through the Direct Request process.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of February 20, 2015 is dismissed, without leave to reapply. The 10 Day Notice of February 20, 2015 is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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: March 04, 2015

Residential Tenancy Branch

