



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 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 declares that on March 16, 2015, the landlord's agent posted the Notice of Direct Request Proceeding to the door of the rental unit. The landlord's agent had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlord and in accordance with section 89(2), I find that the tenant will be deemed served with the Direct Request Proceeding documents on March 19, 2015, three days after its posting.

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 tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on January 09, 2014, indicating a monthly rent of \$650.00, due on the fifteenth day of the month, for a tenancy commencing on January 15, 2014;

- A letter from the landlord authorizing the landlord's agent to act on their behalf;
- A Monetary Order Worksheet 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 March 02, 2015, and posted to the tenant's door on March 02, 2015, with a stated effective vacancy date of March 12, 2015, for \$650.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord's agent indicates that the 10 Day Notice was posted to the tenant's door at 5:40 p.m. on March 02, 2015. The 10 Day 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.

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 they served the tenants with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*. This section reads in part as follows:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given 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 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 registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71

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

(2) An application by a landlord under section 55 *[order of possession for the landlord]*, 56 *[application for order ending tenancy early]* or 56.1 *[order of possession: tenancy frustrated]* must be given to the tenant in one of the following ways:

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be posted on the door of the rental unit.

Section 89(2) (d) of the *Act* does allow for the Notice of Direct Request Proceeding to be posted on the door of the rental unit but only when considering an Order of Possession for the landlord.

As noted at the beginning of this decision, I find that in posting the Notice of Direct Request documents to the door of the rental unit, only the service requirement of Section 89(2) has been met.

Therefore I dismiss the monetary portion of landlord' application against the tenant with leave to reapply.

I note that the landlord has requested a monetary Order for unpaid utilities. Section 46 (6) of the *Act* establishes that "if the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section."

The date of the written demand for payment was March 2, 2015, which is less than 30 days from the time that the 10 Day Notice was served to the tenants and not enough time had passed, in accordance with section 46 (6) of the *Act*, to allow the landlord to treat the unpaid utilities as unpaid rent. The landlord would have then had to issue the 10 Day Notice with the amount of utilities owed showing on the 10 day Notice but the only amount on the 10 Day Notice was for the unpaid rent. I have noted this for the landlord's information only as I have already dismissed the monetary portion of the landlord's claim with leave to reapply.

Section 46 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The residential tenancy agreement submitted by the landlord shows that the day in the month on which the rent is due is the fifteenth of every month. The 10 Day Notice was issued on March 02, 2015 which is a day before the date that the rent was actually due.

I note that the landlord has offered an explanation that the tenant was going to start the tenancy on the fifteenth of the month but then changed it to the first of the month to align with their source of income. Section 14(2) of the *Act* states that... "A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment".

I find that there is no evidence submitted by the landlord that clearly demonstrates the landlord and the tenant agreed to change the day in the month on which the rent is due and that the 10 Day Notice issued by the landlord on March 2, 2015, is not in compliance with Section 46(1) of the *Act*.

Therefore, I dismiss the landlord's application for an Order of Possession without leave to reapply.

The 10 Day Notice of March 02, 2015 is cancelled and of no force or effect.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of March 02, 2015 is dismissed, without leave to reapply.

The 10 Day Notice of March 02, 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 19, 2015

Residential Tenancy Branch

