



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 March 30, 2015, the landlords sent Tenant T.C. the Notice of Direct Request Proceeding by registered mail to an address that is not the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 30, 2015, the landlords sent Tenant G.B. the Notice of Direct Request Proceeding by registered mail to an address that is not the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

Issue(s) 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:

- Two copies of the Proof of Service of the Notices of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the Landlord P.B. and Tenant T.C. on February 21, 2014, and Tenant G.B. on February 25, 2014, indicating a monthly rent of \$1,150.00, due on the first day of the month for a tenancy commencing on February 19, 2014;
- 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 06, 2015, and personally handed to Tenant G.B. on March 06, 2015, and posted on the door of the rental unit on March 06, 2015 with a stated effective vacancy date of March 16, 2015, for \$4,025.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was personally handed to Tenant G.B. at 3:45 p.m. on March 06, 2015.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was also posted to the door of the rental unit at 2:00 p.m. on March 06, 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. 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.

In this type of matter, the landlords must prove they served the tenants with the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice in accordance with Section 89 of the *Act*, which permits service “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.”

I find that the addresses provided by the landlords on the Proof of Service Notice of Direct Request Proceedings, to which the Notices were served, are at different addresses for each tenant, neither of which is the rental unit.

I further find that there is no documentation showing that the tenants reside at the addresses to which the Notices of Direct Request Proceeding have been sent and there is no documentation showing that the tenants have requested to have the Notices of Direct Request Proceeding served at any address other than to the rental unit.

Therefore, since I find that the landlords have not served the tenants with notice of this application, in accordance with Section 89 of the *Act*, I dismiss the landlords’ application for an Order of Possession based on unpaid rent and a monetary Order with leave to reapply.

I note that if the tenants are no longer living at the rental unit, the landlords may wish to inquire about Part 5 of the Residential Tenancy Regulations regarding abandonment.

Conclusion

The landlords’ application 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: April 08, 2015

Residential Tenancy Branch

