



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 May 11, 2015, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlord, 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 May 16, 2015, the fifth day after their registered mailing.

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 tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on March 23, 2012, indicating a monthly rent of \$1,000.00 due on the first day of the month for a tenancy commencing on May 1, 2012;
- The landlord established the manner in which rent was raised from the initial \$1,000.00 stated in the tenancy agreement to the current amount of \$1,060.00 by providing copies

of “Notice of Rent Increase” forms provided to the tenant during the course of the tenancy;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 2, 2015, which the landlord states was served to the tenant on May 2, 2015, for \$1,060.00 in unpaid rent due on May 1, 2015, with a stated effective vacancy date of May 12, 2015; and
- A copy of the Proof of Service of the Notice on which the landlord indicates that he served the Notice to the tenant by way of posting it to the door of the rental unit on May 2, 2015;
- As part of the application, the landlord provided a written submission in which he provides a chronological account of when the Notice was served to the tenant and the date on which the tenant subsequently paid the overdue monthly rent owed for May 2015;

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

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 for 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 tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. 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 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.

I have reviewed all documentary evidence provided by the landlord. In his written submission that accompanied the application, and on the Proof of Service of the Notice form, the landlord indicates that he served the Notice to the tenant by way of posting the Notice to the front door of the rental unit on May 2, 2015. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the

Act, I find that the tenant is deemed to have received the Notice on May 5, 2015, three days after its posting.

I find that there is no evidentiary material before me to demonstrate that the tenant acknowledged receipt of the Notice on a date earlier than May 5, 2015. Section 46 of the Act provides, in part, the following with respect to a 10 Day Notice to End Tenancy for Unpaid Rent:

- 46** (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.

I find that, as the tenant was deemed to have received the Notice on May 5, 2015, the tenant's latest opportunity to either pay, in full, the amount listed on the Notice, or to file for dispute resolution to dispute the Notice, would have been May 10, 2015. In his written submission, the landlord establishes that he picked up the rent cheque for May 2015 on May 9, 2015 and cashed the cheque on the same day, thereby demonstrating that he had received from the tenant the monthly rent owed for May 2015 on a date earlier than May 10, 2015, the tenant's latest opportunity to pay the overdue rent in full.

As the tenant had paid the overdue rent in full before May 10, 2015, I find that the Notice dated May 2, 2015 is set aside and is of no force and effect.

As the landlords' application for an Order of Possession arises from a Notice that has been set aside, I dismiss the landlord's application for an Order of Possession, based on the May 2, 2015 Notice, without leave to reapply.

Conclusion

I dismiss the landlords' application for an Order of Possession, based on the May 2, 2015 Notice, without 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: May 14, 2015

Residential Tenancy Branch

