



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 July 27, 2015, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had the tenant sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this personal 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 duly served with the Direct Request Proceeding documents on July 27, 2015.

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 a residential tenancy agreement which was signed by a landlord who is not the applicant and the tenant on July 15, 2011, indicating a monthly rent of \$500.00, due on the last day of the month for a tenancy commencing on July 15, 2011;

- A copy of a Notice of Rent Increase form showing the rent being increased from \$550.00 to the current monthly rent amount of \$570.00.
- A Monetary Order Worksheet showing a total rent owing of \$1,400.00 as of June 1, 2015; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 18, 2015, and personally served to the tenant on July 18, 2015, with a stated effective vacancy date of July 28, 2015, for \$1,140.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenant at 1:20 (a.m. or p.m. not indicated) on July 18, 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

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.

I have reviewed all documentary evidence and I find that the landlord's name on the residential tenancy agreement, 10 Day Notice and Notice of Rent Increase does not match the landlord's name on the Application for Dispute Resolution or any other documentation submitted with the Application for Dispute Resolution. There is also no documentation referring to the transfer of responsibilities from the landlord named on the residential tenancy agreement to the landlord applying for dispute resolution.

I note that the landlord is claiming a monetary amount of \$1,140.00 and the Monetary Order worksheet does not specify which amounts and months are outstanding.

I also note that the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice. The landlord submitted the most recent Notice of Rent Increase form showing the rent being increased from \$550.00 to \$570.00. However, the landlord did not submit the Notice of Rent Increase forms showing the rent being increased from the original \$500.00 to \$550.00. Where there has been a rent increase, the appropriate Notice of Rent Increase forms must be submitted with the Application for Dispute Resolution to substantiate the claim for the increased rent.

Furthermore, 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 address for the rental unit that is not the address included on the tenancy agreement. This effectively gives notice to the tenant to move out of an address that is not the address of the rental unit as established in the tenancy agreement.

As a result of the above-noted deficiencies, I dismiss the landlord's application for an Order of Possession with leave to reapply. It remains open to the landlord to issue a new 10 Day Notice if the landlord so wishes.

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 with 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: July 28, 2015

Residential Tenancy Branch

