



Dispute Resolution Services

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 landlords for an Order of Possession based on unpaid rent.

The landlords submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on July 27, 2015, the landlord personally served the tenants the Notices of Direct Request Proceeding. The landlord had a witness and the tenants sign the Proofs of Service of the Notices 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 tenants have been duly served with the Direct Request Proceeding documents on July 27, 2015.

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*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proofs 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 and the tenants on September 26, 2014, indicating a monthly rent of \$850.00 due on the first day of the month;

- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 20, 2015, and personally served to the tenants on July 20, 2015, with a stated effective vacancy date of July 30, 2015, for \$900.00 in unpaid rent.

Signed and witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenants at 1:42 pm on July 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

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on July 20, 2015.

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.

Paragraph 13(2)(f)(v) of the *Act* establishes that a tenancy agreement is required to identify “the day in the month, or in the other period on which the tenancy is based, on which the rent is due.” Section 46 (1) of the *Act* outlines the grounds on which a notice to end tenancy for non-payment of rent may be issued.

The residential tenancy agreement submitted by the landlords indicates that the rent “is due at the beginning of each month.” The agreement has no clear date indicating the day in the month on which the rent is due, which is necessary in order to determine the validity of the 10 Day Notice as a landlords cannot ask for rent before the day it is due.

As the Direct Request process is an *ex parte* process that does not allow for the clarification of facts, I find that I am not able to confirm when the monthly rent is due and that this fact may be clarified in a participatory hearing. However, there are other issues

which preclude me from ordering that these direct request proceedings be reconvened to a participatory hearing.

I note that section 46 (4) of the *Act* states that, within five days of a tenants receiving the 10 Day Notice, the tenants may either pay the rent or dispute the 10 Day Notice.

The definition of days in the Residential Tenancy Branch Rules of Procedure states that: "If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open".

I find that the fifth day for the tenants to have either paid the rent or disputed the notice was July 25, 2015, which was a Saturday. The Residential Tenancy Branch is closed on Saturdays and Sundays, meaning that the latest day on which the tenants could have disputed the 10 Day Notice was on Monday, July 27, 2015.

I further find that the landlords applied for dispute resolution on July 27, 2015, the last day that the tenants had to dispute the 10 Day Notice, and that the earliest date that the landlords could have applied for dispute resolution was July 28, 2015. The landlords made their application for dispute resolution one day too early.

Therefore, the landlords' application for an Order of Possession based on unpaid rent is dismissed with leave to reapply.

Conclusion

I dismiss the landlords' application 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