



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 slid the Notice of Direct Request Proceeding under the door of the rental unit. The landlord had a witness sign the Proof of Service of the Notice of Direct Request to confirm this service.

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 provided to the tenant in the manner described above;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on June 17, 2015, indicating a monthly rent of \$620.00, due on the first day of the month for a tenancy commencing on June 17, 2015;

- 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 5, 2015, and posted to the tenant's door on July 5, 2015, with a stated effective vacancy date of July 15, 2015, for \$620.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 9:52 pm on July 5, 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

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on July 8, 2015, three days after its posting.

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.

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.

In this type of matter, the landlord must prove they served the tenant the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per subsection 89 (1) of the *Act* which reads in part as follows;

89 (1) An application for dispute resolution..., 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;...

(c) by sending a copy by registered mail to the address at which the person resides...;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...

I find that the landlord has not served the Notice of Direct Request Proceeding in a method of service that is in accordance with section 89 of the *Act*. Since I find that the landlord has not served the tenant with notice of this application in accordance with section 89 of the *Act*, the landlord's application for an Order of Possession based on unpaid rent and a Monetary Order is dismissed, with leave to reapply.

I further note that section 4 (c) of the *Act* states that the *Act* does not apply to "*living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.*" The landlord submitted a tenancy agreement that identifies the applicant as the owner and principal tenant.

The Direct Request process is an ex parte proceeding that does not allow for any clarification of the facts. It would be difficult to determine in a non-participatory hearing whether the owner of the property is sharing bathroom or kitchen facilities with the tenant. In the event that the landlord wishes to reapply, I would suggest that the landlord review section 4(c) of the *Act* to ensure that that this tenancy falls within the jurisdiction of the Residential Tenancy Branch. Given these circumstances, any subsequent application for dispute resolution by the landlord may need to be undertaken by way of a participatory hearing and not through the Direct Request process and must correctly identify the rental unit involved in the application.

Based on the foregoing, I dismiss the landlord's application with leave to reapply.

Conclusion

I dismiss the landlord's 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 29, 2015

Residential Tenancy Branch

