



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 one signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 31, 2015, the landlord sent the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided one copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this 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*?

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 tenants;

- A copy of a residential tenancy agreement which was signed by the landlord and Tenant K.N. on May 8, 2015, indicating a monthly rent of \$1,150.00, due on the first day of the month for a tenancy commencing on May 15, 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 20, 2015, and sent to the tenants by registered mail on July 20, 2015, with a stated effective vacancy date of July 9, 2015, for \$1,150.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was sent to the tenants by registered mail at 11:09 am on July 20, 2015. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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

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.

In this type of matter, the landlord must prove that they served each tenant with the Notice of Direct Request proceeding, with all the required inclusions, as indicated on the Notice as per Section 89 of the *Act*.

I find that the landlord has only provided one registered mail receipt and one Proof of Service of the Notice of Direct Request Proceedings and has indicated, on the registered mail receipt, that the Notice of Direct Request Proceeding was served to both tenants. By not clearly indicating on the registered mail receipt the tenant that was served with the Notice of Direct Request Proceeding, I find that I am not able to determine which of the tenants was served with the Notice and, accordingly, I cannot confirm service of the Notice to either of the tenants.

Therefore, the landlord's application for an Order of Possession based on unpaid rent and a Monetary Order is dismissed 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: August 05, 2015

Residential Tenancy Branch

