



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 subsection 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.

Issues to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Background and Evidence

The landlords submitted the following evidentiary material:

- copies of the Proofs of Service of the Notice of Direct Request Proceeding served to each of the tenants;
- a copy of the residential tenancy agreement;
- a Monetary Order Worksheet;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice);
- a copy of the Proof of Service of the 10 Day Notice; and
- a receipt indicating payment from the tenants in the amount of \$550.00 on 4 August 2015.

The tenancy agreement is dated 3 July 2015 and establishes a monthly rent of \$1,200.00.

The 10 Day Notice is dated 2 August 2015. The 10 Day Notice sets out outstanding rent in the amount of \$550.00 was due on 1 August 2015. The 10 Day Notice sets out an effective date of 12 August 2015.

The Proof of Service for the 10 Day Notice indicates that the 10 Day Notice was served 2 August 2015.

The landlords provided a receipt that indicates that \$550.00 was paid by the tenant AP on 4 August 2015.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice. Pursuant to paragraph 46(5)(a) of the Act, if the tenant pays the overdue rent within five days after receiving a 10 Day Notice, that notice is of no effect.

The evidence indicates that the 10 Day Notice was served 2 August 2015. The evidence also indicates that the tenants paid their rent, in full, on 4 August 2015. As the tenants paid their rent within five days of receiving the 10 Day Notice, the 10 Day Notice is of no effect. As the 10 Day Notice is not valid, the landlords are not entitled to an order of possession. The landlords' application is dismissed without leave to reapply.

Conclusion

The landlords' application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: September 01, 2015

Residential Tenancy Branch

