



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 September 04, 2015, the landlord posted the Notice of Direct Request Proceeding to the door of the rental unit. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service.

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

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be given to the tenant by attaching a copy to a door at the address at which the tenant resides. Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be given to the tenant by attaching a copy to a door at the address at which the tenant resides, only when considering an Order of Possession for the landlord.

Based on the written submission of the landlord, and in accordance with sections 89(2) and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents, for the purpose of obtaining the Order of Possession only, on September 07, 2015, the third day after their posting.

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*?

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 the tenant on August 19, 2015, indicating a monthly rent of \$650.00 due on the first day of the month for a tenancy commencing on August 16, 2015;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy. The Monetary Order Worksheet noted that \$325.00 of the \$650.00 identified as owing in the 10 Day Notice was paid on August 31, 2015; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 28, 2015, and personally handed to the tenant on August 28, 2015, with a stated effective vacancy date of September 06, 2015, for \$650.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to the tenant at 6:00 p.m. on August 28, 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 section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on August 28, 2015.

I find that the tenant was obligated to pay the monthly rent in the amount of \$650.00, as per the tenancy agreement. I further find that the monthly rent for August was pro-rated to \$325.00, as per the third page of the tenancy agreement, and that the amount of \$650.00 that is on the 10 Day Notice comprises of \$325.00 of rent owing and \$325.00 of the security deposit owing.

Section 46 of the *Act* allows for the landlord to end the tenancy if the rent is unpaid on any day after it is due by giving the tenant the 10 Day Notice. Section 47 of the *Act* allows for the landlord to end the tenancy for cause when the tenant has not paid the security deposit within 30 days of the date it is required to be paid under the tenancy agreement.

Therefore, the only amount that the landlord is legally entitled to identify on the 10 Day Notice is for the amount of pro-rated monthly rent owing of \$325.00, which is the only amount the tenant was legally bound to pay within five days of receiving the 10 Day Notice.

The Monetary Order Worksheet shows that the tenant paid the pro-rated monthly rent owing of \$325.00 on August 31, 2015, within five days after receiving the 10 Day Notice. As per section 46 (4) of the *Act*, when the tenant pays the overdue rent within five days, the 10 Day Notice has no effect.

For the above reasons, the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of August 28, 2015, is dismissed, without leave to reapply. The 10 Day Notice of August 28, 2015 is cancelled and of no force or effect.

I find that the landlord has served the Notice of Direct Request Proceeding to the door of the rental unit at which the tenant resides, and for this reason, the monetary portion of landlord's application is dismissed with leave to reapply.

Conclusion

I dismiss the landlord's application for an Order of Possession on the basis of the 10 Day Notice of August 28, 2015 is dismissed, without leave to reapply. The 10 Day Notice of August 28, 2015 is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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: September 10, 2015

Residential Tenancy Branch

