



Dispute Resolution Services

Page: 1

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 16, 2015, the landlord placed the Notice of Direct Request Proceeding in the mailbox of the rental unit. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding 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 served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on July 30, 2009, indicating a monthly rent of \$1,600.00, due on the first day of the month for a tenancy commencing on August 01, 2009;

- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,600.00 to the current monthly rent amount of \$1,640.00;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 02, 2015, and left in the mailbox at the tenant's residence on September 02, 2015, with a stated effective vacancy date of September 15, 2015, for \$1,640.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was left in the mailbox at the tenant's residence at 3:55 p.m. on September 02, 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

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 subsections 89 (1) and (2) of the *Act* which permit service by;

- Leaving a copy with the person;
- By sending a copy by registered mail to the address at which the person resides;
- By leaving a copy with an adult who apparently resides with the tenant; and
- By attaching a copy to the door or other conspicuous place at the address at which the tenant resides.

I find that the landlord has served the Notice of Direct Request Proceeding by leaving it in the mailbox of the rental unit, which is not 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 note that the landlord has served the 10 Day Notice to the tenant by leaving it in the mailbox at the tenant's residence. As noted on the Proof of Service Notice to End Tenancy as well as in Policy Guideline #39, leaving the 10 Day Notice in the mailbox at the tenant's residence is not an approved method of service for Direct Requests. If the Notice of Direct Request was served in accordance with section 89 of the *Act*, I still would have had to send this application to a participatory hearing.

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: September 21, 2015

Residential Tenancy Branch

