



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC

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 15, 2015, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on September 20, 2015, the fifth day after their registered 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 tenant;

- A copy of an agreement which was signed by the landlord and the tenant on November 15, 2014, indicating a monthly rent of \$1,000.00, due on the first day of the month for a tenancy commencing on a date not specified in the agreement. I note that the agreement states, under term #7, “No living in shop”;
- A copy of a Clarification for Building on... (Clarification), which states that the “Tenant is renting the shop for storage for his items and cars. He is not renting the house or any other building. He does not live at the rental property. He has his own house on *** Ave in ***”;
- 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 August 13, 2015, and sent by registered mail to the rental unit on August 28, 2015, with a stated effective vacancy date of August 23, 2015, for \$2,000.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was sent by registered mail to the rental unit at 4:17 p.m. on August 28, 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 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

Section 2(1) of the *Act* reads in part as follows:

What this Act applies to...

2 (1)....this Act applies to tenancy agreements, rental units and other residential property.

The definition of a tenancy agreement is set out in Part 1 of the *Act* as “an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit”.

I find that there is no licence to occupy the rental unit. The agreement submitted by the landlord clearly indicates that no one is permitted to live in the rental unit and the landlord states in their Clarification that the tenant does not live at the rental property. I

find that the rental unit was provided to the tenant as a place for “storage for his items and cars” as stated in the Clarification.

Under these circumstances and based on the evidence before me, I find that the *Act* does not apply to this tenancy. I therefore have no jurisdiction to render a decision in this matter.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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

