



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 October 19, 2015, the landlord personally served Tenant S.G. the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89, I find that Tenant S.G. has been duly served with the Direct Request Proceeding documents on October 19, 2015, the day it was personally served to them.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 20, 2015, the landlord sent Tenant S.H. 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.

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 a residential tenancy agreement which was signed by Landlord D.S. on August 25, 2015, Landlord T.S. on September 01, 2015, and the tenants on August 29, 2015, indicating a monthly rent of \$900.00 due on the first day of the month for a tenancy commencing on September 01, 2015;
- 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 October 01, 2015, and posted to the tenant's door on October 01, 2015, with a stated effective vacancy date of October 01, 2015, for \$900.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 11:55 a.m. on October 01, 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 I find that on the Application for Dispute Resolution, the landlord has indicated that Tenant S.H. has moved out of the rental unit. I further find that if Tenant S.H. was no longer living at the rental unit, they could not have received the Notice of Direct Request documents that were mailed to an address where Tenant S.H. no longer resides. For this reason, the landlord's application naming Tenant S.H. as a respondent is dismissed, with leave to reapply.

Section 46 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find that the 10 Day Notice has been served on October 01, 2015, the same day that the rent is due, which is not in accordance with section 46 of the *Act*. Therefore, the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of October 01, 2015, is dismissed without leave to reapply. The 10 Day Notice of October 01, 2015 is cancelled and of no force or effect.

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

For the same reasons, the landlord's application for a monetary Order is dismissed, with leave to reapply.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of October 01, 2015 is dismissed, without leave to reapply. The 10 Day Notice of October 01, 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: October 20, 2015

Residential Tenancy Branch

