



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 24, 2015, the landlord placed the Notice of Direct Request Proceeding under the windshield of the tenant's car. 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 tenant on August 14, 2015, indicating a monthly rent of \$1,100.00, due on the first day of the month for a tenancy commencing on August 01, 2015. A tenancy agreement is an instrument of the landlord, and, once endorsed by the tenant, the landlord's failure to sign their own agreement does not invalidate it;

- 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 06, 2015, and posted to the tenant's door on October 06, 2015, with a stated effective vacancy date of October 16, 2015, for \$1,100.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 5:15 p.m. on October 16, 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 sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on October 09, 2015, three days after its posting.

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 under the windshield of the tenant's car, 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.

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: October 28, 2015

Residential Tenancy Branch

