



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 26, 2015, the landlord personally served the tenant 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.

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 May 01, 2015, indicating a monthly rent of \$800.00, due on the first day of the month for a tenancy commencing on May 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 09, 2015, and posted to the tenant's door on October 09, 2015, with a stated effective vacancy date of October 19, 2015, for \$1,620.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 11:00 a.m. on October 09, 2015. The 10 Day Notice states that the tenants 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 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,...and

(e) when given by a landlord, be in the approved form...

I have reviewed all documentary evidence and I find that the address from which the tenant must move out of is not indicated on the 10 Day Notice, therefore, making the 10 Day Notice incomplete. In a participatory hearing it may be possible to amend an incorrect address but the *Act* does not allow an arbitrator to input an address where none is written in.

I further find that the 10 Day Notice is not signed by the landlord, which is another provision of section 52 which is necessary to make the 10 Day Notice effective.

For the above reasons, I find that the landlord has not complied with the provisions of section 52 of the *Act* in regards to the 10 Day Notice served to the tenant.

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 09, 2015, is dismissed, without leave to reapply.

The 10 Day Notice of October 09, 2015 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, the landlord's application for a monetary Order is dismissed, with leave to reapply.

I note that the Proof of Service of the Notice of Direct Request does not have a witness signature on the actual form as the landlord has submitted the second page of the Proof of Service Notice to End Tenancy in its place, which has been altered to act as the POS for the Notice of Direct Request. Even if the 10 Day Notice complied with section 52 of the *Act*, I would have concerns about the service of the Notice of Direct Request as the date of the signature for the witness is for October 09, 2015 and the Notice of Direct Request was served on October 26, 2015.

Conclusion

I dismiss the landlord's application for an Order of Possession on the basis of the 10 Day Notice of October 09, 2015, without leave to reapply.

The 10 Day Notice of October 09, 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 28, 2015

Residential Tenancy Branch

