



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 two signed Proof of Service of the Notice of Direct Request Proceedings which declares that on October 29, 2015, the landlord sent the tenants the Notices of Direct Request Proceeding by registered mail to the rental unit. The landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants will be deemed served with the Direct Request Proceeding documents on November 03, 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:

- Two copies of the Proof of Service of the Notices of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and a person named as an employee on July 10, 2015, indicating a monthly rent of \$700.00 for a tenancy commencing on August 01, 2015;
- A copy of 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 17, 2015, and posted to the tenant's door on October 17, 2015, with a stated effective vacancy date of October 27, 2015, for \$700.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door on October 17, 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 20, 2015, three days after its posting.

Section 46 (4) of the *Act* states that, within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice. The definition of days in the Residential Tenancy Branch Rules of Procedure states that: "If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open".

I find that the fifth day for the tenant to have either paid the rent or disputed the notice is October 25, 2015, which was a Sunday. The Residential Tenancy Branch is closed on Saturdays and Sundays, meaning that the latest day on which the tenant could have disputed the 10 Day Notice was on Monday, October 26, 2015. I further find that the landlord applied for dispute resolution on October 26, 2015, the last day that the tenant had to dispute the 10 Day Notice, and that the earliest date that the landlord could have applied for dispute resolution is October 27, 2015. I find that the landlord made their application for dispute resolution one day too early.

I note that 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.

The residential tenancy agreement submitted by the landlord has no date indicating the day in the month on which the rent is due, which is necessary in order to determine the validity of the 10 Day Notice as a landlord cannot ask for rent before the day it is due. If the landlord had not applied too early then I still would not have been able to issue any Orders as, in an ex parte hearing, I am not able to determine the day in the month that the rent is due if it is not written on the tenancy agreement. I also note that the tenant's names are not written out on the agreement submitted by the landlord, and that the signature of the employee is not legible. This application is not suitable for the Direct Request process.

For the above reasons, the landlord's application for an Order of Possession on the basis of the 10 Day Notice of October 17, 2015 is dismissed, with leave to reapply.

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

Conclusion

I dismiss the landlord's application for an Order of Possession on the basis of the 10 Day Notice of October 17, 2015, with leave to reapply.

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: November 02, 2015

Residential Tenancy Branch

