



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 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 and a monetary order for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 1, 2015, the landlord served the tenants with the Notice of Direct Request Proceeding via registered mail.

However, it appears the landlord made an administrative error in the proof of service as the Canada post tracking numbers submitted as evidence, show the documents were sent on November 2, 2015, which is consistent with the date they filed their application.

However, I am satisfied the tenants were served in accordance with section 90 of the Act, which determines that a document served in this manner is deemed to have been served five days later.

Preliminary matter

In this case the landlord filed an Application for Dispute Resolution by Direct Request on November 2, 2015, based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on September 2, 2015.

On September 4, 2015, the tenants’ filed an Application for Dispute Resolution to dispute the above notice, which was scheduled to be heard on October 21, 2015.

On October 21, 2015, both parties attended the hearing, the decision reads in part,

“Upon consideration of the evidence, including the testimony of the parties, I find that the settlement agreement is valid. The tenants are co-tenants under the agreement, so even if one of the tenants signed the agreement they both would

be bound by it. The tenants did not provide sufficient evidence to establish that they were coerced or put under duress to sign the agreement. Further, they did not provide any evidence that the male tenant was not mentally capable of understanding and signing the agreement on that date.”

[Reproduced as written]

In this matter the landlord is claiming for an order of possession and a monetary order for unpaid rent based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on September 2, 2015, which was before the Arbitrator on October 21, 2015.

The Arbitrator determined the settlement agreement made by the parties on September 13, 2015, was valid. According to the agreement, the landlord would pay the tenants \$370.00 and waive rent for September 2015 and October 2015.

Although the Arbitrator dismissed the tenants' application it was due to the parties entering into a settlement agreement. As the agreement stated rent for September 2015, is waived. I find that the parties are bound by that agreement. Therefore, I dismiss the landlord's application for an order of possession and a monetary order based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on September 2, 2015.

However, if the tenants' have violated that agreement, such as failing to vacate on the agreed upon date. The landlord is entitled to file a New Application for Dispute Resolution through the participatory process for an order of possession based on the grounds that the tenants have breached an agreement. The landlord would also be at liberty to seek monetary compensation suffered as a result of the breach.

Conclusion

The landlord's application is dismissed.

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 09, 2015

Residential Tenancy Branch

