



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 December 11, 2015, the landlord personally served Tenant C.B. 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 (1) of the *Act*, I find that Tenant C.B. has been duly served with the Notice of Direct Request Proceeding documents on December 11, 2015.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 11, 2015, the landlord served Tenant D.B. the Notice of Direct Request Proceeding by personally handing it to Tenant C.B., an adult who resides with Tenant D.B. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm service.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant, only when considering an Order of Possession for the landlord.

Based on the written submission of the landlord and in accordance with section 89 (2) of the *Act*, I find that Tenant D.B. has been duly served with the Notice of Direct Request Proceeding documents on December 11, 2015, in consideration of the Order of Possession only.

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 Tenant C.B. on April 10, 2013, indicating a monthly rent of \$700.00, for a tenancy commencing on February 01, 2013;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy. The Monetary Order Worksheet noted that \$300.00 of the \$700.00 identified as owing in the 10 Day Notice was paid on December 05, 2015; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 02, 2015, and personally handed to Tenant C.B. on December 02, 2015, with a stated effective vacancy date of December 12, 2015, for \$700.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to Tenant C.B. at 10:00 a.m. on December 02, 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 find that the landlord has not complied with the provisions of section 52 of the *Act*.

I note that paragraph 13(2) (f) (v) of the *Act* establishes that a tenancy agreement is required to identify “the day in the month, or in the other period on which the tenancy is based, on which the rent is due.”

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. For this reason, this application will not be suitable for the direct request process once a new 10 Day Notice has been issued to the tenant.

Therefore, I dismiss the landlord’s application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of December 02, 2015, without leave to reapply.

The 10 Day Notice of December 02, 2015 is cancelled and of no force or effect.

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

The landlord’s application for an Order of Possession on the basis of the 10 Day Notice of December 02, 2015 is dismissed, without leave to reapply. The 10 Day Notice of December 02, 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: December 16, 2015

Residential Tenancy Branch

