



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM 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 22, 2015, the landlord personally served Tenant M.D. the Notice of Direct Request Proceeding. The landlord had Tenant M.D. sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that Tenant M.D. has been duly served with the Direct Request Proceeding documents on December 22, 2015.

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 Tenant M.D.;

- A copy of a residential tenancy agreement which was signed by the landlord and Tenant J.J. on September 15, 2014 and Tenant A.J. on November 15, 2015, indicating a monthly rent of \$1,500.00, due on the first day of the month for a tenancy commencing on September 15, 2015;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 16, 2015, and personally served to Tenant M.D. on December 16, 2015, with a stated effective vacancy date of December 26, 2015, for \$1,535.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to Tenant M.D. at 3:40 pm on December 16, 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

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

Paragraph 12 (1) (b) of the Residential Tenancy Regulations establishes that a tenancy agreement is required to “be signed and dated by both the landlord and the tenant.”

I find that the residential tenancy agreement submitted by the landlord is not signed by Tenant M.D., which is a requirement of the direct request process.

I also note that the residential tenancy agreement submitted by the landlord was signed by two tenants, Tenant A.J. and Tenant J.J. However, the landlord’s Application for Dispute Resolution and the 10 Day Notice list these two parties as one: Tenant A-J. J.

In this type of matter, the landlord must prove they served the tenants with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*.

The landlord did not submit a Proof of Service of the Notice of Direct Request Proceeding for Tenant A.J, Tenant J.J or Tenant A-J.J. As such, I am unable to confirm service of the Direct Request Proceeding documents on these tenants.

Due to the reasons listed above, I dismiss the landlord's application in its entirety with leave to reapply.

Conclusion

The landlord's application for an Order of Possession and a Monetary Order is dismissed 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: January 04, 2016

Residential Tenancy Branch

