



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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 12, 2016, the landlords personally served the tenant the Notice of Direct Request Proceeding. The landlords had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlords and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on January 12, 2016.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on November 1, 2015, indicating a monthly rent of \$1,100.00, due on the first day of the month for a tenancy commencing on November 1, 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 January 3, 2016, and personally served to the tenant on January 3, 2016, with a stated effective vacancy date of January 13, 2016, for \$1,100.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was personally served to the tenant at 2:30 pm on January 3, 2016. 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

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.

Section 52 of the Act provides the following with respect to a notice 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,**
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and**
- (e) when given by a landlord, be in the approved form.**

The 10 Day Notice submitted by the landlords includes an incorrect address for the rental unit, which effectively gives notice to the tenant to move out of an address that is not the correct address of the rental unit as established in the tenancy agreement. I also note that the 10 Day Notice is not signed by the landlord. I find this sufficiently invalidates the 10 Day Notice. Therefore, I find the 10 Day Notice is not in accordance with section 52 of the *Act*.

As a result of the above-noted deficiencies, I dismiss the landlords' application for an Order of Possession without leave to reapply. The 10 Day Notice of January 3, 2016 is cancelled and of no force or effect. It remains open to the landlords to issue a new 10 Day Notice if the landlords so wish.

For the same reasons identified in the 10 Day Notice, I also dismiss the landlords' application for a Monetary Order for unpaid rent with leave to reapply.

Conclusion

I dismiss the landlords' application for an Order of Possession based on the 10 Day Notice of January 3, 2016 without leave to reapply

I dismiss the landlords' 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: January 18, 2016

Residential Tenancy Branch

