



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 January 15, 2016, the landlord personally served the tenant 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, I find that the tenant has been duly served with the Direct Request Proceeding documents on January 15, 2016, the day it was personally served to them.

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 the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on August 29, 2015, indicating a monthly rent of \$1,200.00 due on the first day of the month for a tenancy commencing on August 29, 2015;

- A copy of a receipt dated, December 18, 2015, for \$1,200.00 of rent paid by the tenant to the landlord;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy. The Monetary Order Worksheet noted that \$1,200.00 of the \$1,200.00 identified as owing in the 10 Day Notice was paid on December 19, 2015; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 11, 2015, and posted to the tenant's door on December 11, 2015, with a stated effective vacancy date of December 21, 2015, for \$1,200.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 4:00 p.m. on December 11, 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 December 14, 2015, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,200.00, as per the tenancy agreement.

Section 46(4) (a) of the *Act*, regarding a landlord's notice for non-payment of rent, states that "within 5 days after receiving a notice under this section, the tenant may pay the overdue rent , in which case the notice has no effect."

I find that the receipt submitted by the landlord indicates that the tenant paid the total rent that was owed on the 10 Day Notice on December 18, 2015, within the five day days allowed by the *Act*.

In a Direct Request proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant. Therefore, within the purview of the Direct Request process, I cannot hear the portion of the landlord's application for a monetary claim arising from rent owed for January 2016.

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 11, 2015, without leave to reapply. The 10 Day Notice of December 11, 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 11, 2015, is dismissed without leave to reapply. The 10 Day Notice of December 11, 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: January 18, 2016

Residential Tenancy Branch

