



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by Direct Request filed by the Landlords on January 14, 2016. The Landlords filed seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 15, 2016, at 10:32 a.m. the Landlords served the Tenant with the Notice of Direct Request Proceeding via registered mail. A Canada Post tracking receipt was submitted into evidence.

Based on the written submission of the Landlord, I find that the Tenant is deemed served with the Dispute Resolution Direct Request Proceeding documents effective January 20, 2016, pursuant to section 90 of the *Act*.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service documents for the Notice of Direct Proceeding for the Tenant;
- The Canada Post receipt and proof of service document which indicates the Tenant was served notice of this proceeding by registered mail on January 15, 2016;
- A copy of a residential tenancy agreement which was signed by all parties for a month to month tenancy that began on February 1, 2015, for the monthly rent of \$695.00 which is payable on the first of each month;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 1, 2016, with an effective vacancy date of January 15, 2016 due to \$695.00 in unpaid rent that was due January 1, 2016; and

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on January 1, 2016 at 8:00 p.m. when it was posted to the Tenant's door.

Analysis

Upon review of the 10 Day Notice to end tenancy for unpaid rent dated January 1, 2016, I find the Notice was not completed in accordance with section 52 of the Act. I make this finding in part because the Notice was still issued too early. The Notice was signed and served to the Tenant on January 1, 2016 for rent of \$695.00 that was due January 1, 2016. Rent cannot be considered unpaid or late until January 2, 2016 the day after rent is due.

Based on the foregoing I find the 10 Day Notice issued and served on January 1, 2016 to be invalid and of no force or effect. Accordingly, I dismiss the Landlords' application without leave to reapply.

Conclusion

The 10 Day Notice issued January 1, 2016 was found to be invalid and the Landlords' application was dismissed, without leave to reapply. If rent remains unpaid the Landlord is at liberty to serve the Tenant with a valid 10 Day Notice and make another application based on the new Notice.

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 21, 2016

Residential Tenancy Branch

