



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 June 16, 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 June 16, 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 May 01, 2009, indicating a monthly rent of \$640.00, due on the first day of the month for a tenancy commencing on May 01, 2009;

- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 02, 2016, with a stated effective vacancy date of June 15, 2016, for \$640.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was left in the mailbox or mail slot at the tenant's residence at 9:00 p.m. on June 02, 2016. 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.

In this type of matter, the landlord must prove that they served the tenants with the 10 Day Notice in a manner that is considered necessary as per Sections 71(2) (a) and 88 of the *Act*. Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request.

PROOF OF SERVICE

10-Day Notice to End Tenancy

The landlord must prove the tenant was served with the 10-Day Notice to End Tenancy.

A landlord must serve the tenant with a 10-Day Notice to End Tenancy by:

registered mail;

in person, with a witness verifying it was served; or

by posting it on the tenant's door or in an equally conspicuous place, with a witness verifying it was served.

Proof of service of the 10 Day Notice to End Tenancy may take the form of:

registered mail receipt and printed tracking report;

a receipt signed by the tenant, stating they took hand delivery of the document(s); or

a witness statement that they saw the landlord deliver the document(s).

I find that the landlord has not submitted the second page of Proof of Service Notice to End Tenancy and that I am not able to confirm service of the 10 Day Notice, dated June 02, 2016, to the tenant.

Although the landlord has proven service for a 10 Day Notice that was given to the tenant for unpaid rent owing for May 2016, I find that the 10 Day Notice that was served to the tenant in June of 2016 also included the unpaid rent owing for May 2016. I further find that the landlord gave the tenant an additional five days to pay the rent owed for May 2016 by including the amount in the 10 Day Notice of June 2016. For this reason I find that the 10 Day Notice given in May of 2016 is no longer effective and cannot be considered.

For the above reason the landlord's application is dismissed, with leave to reapply.

Conclusion

I dismiss the landlord's application for an Order of Possession and 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: July 05, 2016

Residential Tenancy Branch