



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 two signed Proof of Service of the Notice of Direct Request Proceedings which declares that on July 13, 2016, the landlord sent the tenants the Notices of Direct Request Proceeding by way of A.C.E. Courier to the tenants and have provided bills of lading to confirm these mailings.

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:

- Two copies of the Proofs of Service of the Notices of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on January 18, 2016, indicating a monthly rent of \$875.00, due on the first day of the month for a tenancy commencing on February 01, 2016;
- 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 07, 2016, and posted to the tenants' door on June 07, 2016, with a stated effective vacancy date of June 18, 2016, for \$895.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenants' door at 9:20 a.m. on June 07, 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

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 June 10, 2015, three days after its posting.

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act* or in accordance with the Director's Plenary Order of June 29, 2016 which allows service by courier with the following conditions:

- The recipient of the documents signs a document provided by the courier which acknowledges receipt; or
- The courier leaves a notice of attempted delivery in the mailbox or posted to the door; or
- If the courier is not able to leave the notice of attempted delivery in the mailbox or posted to the door, the courier leaves the notice of attempted delivery in a conspicuous place and the sender provides proof that they have attempted to contact the recipient by telephone or email to inform the recipient of the attempted delivery

I find that the method of service chosen by the landlord, does not meet the conditions set out in the Director's Plenary Order of June 29, 2016, as there is no tracking information to confirm any of the above and no information on the bills of lading provided which indicate service in the above manner.

I find that I am not able to confirm service of the Notice of Direct Request to the tenants, which is a requirement of the Direct Request process.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices 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,...and

(e) when given by a landlord, be in the approved form...

I have reviewed all documentary evidence and I find that the address that the tenant must move out of, on the 10 Day Notice, is incomplete. I find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*.

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 June 07, 2016, without leave to reapply.

The 10 Day Notice of June 07, 2016 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice the landlord's application for a monetary Order is dismissed, with leave to reapply.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of June 07, 2016 is dismissed, without leave to reapply.

The 10 Day Notice of June 07, 2016, 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: July 14, 2016

Residential Tenancy Branch