



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 two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on July 26, 2016, the landlords sent the tenants the Notices of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Numbers to confirm these mailings.

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 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 landlords and the tenants on August 2, 2014, indicating a monthly rent of \$1,375.00, due on the first day of the month for a tenancy commencing on August 1, 2014;
- 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 July 5, 2016, and sent to the tenants by registered mail on July 5, 2016, with a stated effective vacancy date of July 20, 2016, for \$1,375.00 in unpaid rent.

Documentary evidence filed by the landlords indicates that the 10 Day Notice was sent to the tenants by registered mail on July 5, 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

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 subsections 89 (1) and (2) of the *Act* which permit service “by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord.” The definition of registered mail is set out in section 1 of the *Act* as “any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.”

I find that the tracking numbers provided by the landlords on the Proofs of Service of the Notices of Direct Request Proceeding are for packages sent by Canada Post’s Xpress Post mailing, which may or may not require a signature from the individual to confirm delivery of the document to the person named as the respondent. In this case, Canada Post’s Online Tracking System shows that signatures were not required for the delivery of these Xpress Post mailings and, as such, they do not meet the definition of registered

mail as defined under the *Act*. Since I find that the landlords have not served the tenants with notice of these applications in accordance with Section 89 of the *Act*, I dismiss the landlords' application for an Order of Possession based on unpaid rent and a Monetary Order with leave to reapply.

Conclusion

The landlords' application is dismissed 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: August 02, 2016

Residential Tenancy Branch