



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

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.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceedings which declares that on October 06, 2016, the landlord personally served the tenants the Notices of Direct Request Proceeding. The landlord had a witness sign the respective Proofs of Service of the Notice of Direct Request Proceeding for each tenant to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on October 06, 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*?

Background and Evidence

The landlord submitted the following evidentiary material:

- Two copies of the Proofs of Service of the Notice of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on June 01, 2016, indicating a monthly rent of \$1,350.00, due on the last day of the month for a tenancy commencing on June 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 30, 2016, and posted to the tenants' door on June 30, 2016, with a stated effective vacancy date of July 15, 2016, for \$2,350.00 in unpaid rent and \$478.98 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenants' door at 5:15 p.m. on June 30, 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

Section 46 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day **after** the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find that the tenancy agreement indicates that the monthly rent is due on the last day of every month. I further find that the landlord has issued the 10 Day Notice on the same day that the monthly rent was due, which is not in accordance with section 46 of the *Act*.

As the landlord has not complied with section 46 of the *Act*, in regards to the 10 Day Notice issued to the tenants, the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of June 30, 2016, is dismissed without leave to reapply.

The 10 Day Notice of June 30, 2016 is cancelled and of no force or effect.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of June 30, 2016 is dismissed, without leave to reapply.

The 10 Day Notice of June 30, 2016, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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: October 12, 2016

Residential Tenancy Branch