



Dispute Resolution Services

Page: 1

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 November 19, 2016, the landlord sent Tenant S.P. the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

The landlord did not submit a signed Proof of Service of the Notice of Direct Request Proceeding for Tenant A.B.

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 tenants;

- A copy of a residential tenancy agreement which was signed by the landlord and Tenant A.B. on October 01, 2016, indicating a monthly rent of \$1,060.00, due on the 3rd day of the month for a tenancy commencing on October 03, 2016;
- A copy of a letter from the landlord advising that Tenant S.P. has never lived in the rental unit.
- 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 November 05, 2016, and posted to the tenant's door on November 05, 2016, with a stated effective vacancy date of November 15, 2016, for \$1,590.00 in unpaid rent.

Witnessed 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 11:00 a.m. on October 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

In this type of matter, the landlord must prove they served the tenant 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 either leaving a copy with the person, sending a copy by registered mail to the address at which the person resides, leaving a copy with an adult who apparently resides with the tenant; or attaching a copy to the door or other conspicuous place at the address at which the tenant resides.

I find that the landlord has served the Notice of Direct Request Proceeding to Tenant S.P. by sending a copy via registered mail to the rental unit, where the landlord states in their letter that Tenant S.P. does not reside. I find that this service is not in accordance with section 89 of the *Act*.

The landlord has not submitted a Proof of Service of the Notice of Direct Request Proceeding for Tenant A.B. and has not established that Tenant A.B. has been served with the Notice of Direct Request Proceeding.

Since I find that the landlord has not served the tenants with notice of this application in accordance with section 89 of the *Act*, the landlord's application for an Order of Possession based on unpaid rent and a monetary Order is dismissed, with leave to reapply.

Conclusion

I dismiss the landlord's application, 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: November 25, 2016

Residential Tenancy Branch