



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 Proofs of Service of the Notices of Direct Request Proceeding which declare that on December 13, 2016, the landlord sent the tenants the Notices 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 Numbers 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:

- 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 landlord on October 5, 2015 and the tenants on November 5, 2015, indicating a monthly rent of \$1,600.00, due on the first day of the month for a tenancy commencing on December 1, 2015;

- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 2, 2016, and posted to the tenants' door on December 2, 2016, with a stated effective vacancy date of December 7, 2016, for \$1,600.00 in unpaid rent; and
- A copy of a second 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 2, 2016, and sent to the tenants by registered mail on December 2, 2016, with a stated effective vacancy date of December 17, 2016, for \$1,600.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the first 10 Day Notice was posted to the tenants' door at 1:00 (a.m. or p.m. not indicated) on December 2, 2016.

Documentary evidence filed by the landlord indicates that the second 10 Day Notice was sent to the tenants by registered mail at 10:00 (a.m. or p.m. not indicated) on December 2, 2016. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

The 10 Day Notices state 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

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the first 10 Day Notice on December 5, 2016, three days after its posting. I also find that the tenants were deemed served with the second 10 Day Notice on December 7, 2016, five days after its mailing.

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 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 landlord on the Proofs of Service of the Notices of Direct Request Proceeding are for a 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, do not meet the definition of registered mail as defined under the *Act*. Since I find that the landlord has not served the tenants with notices of this application in accordance with Section 89 of the *Act*, I dismiss the landlord’s application for an Order of Possession based on unpaid rent and a Monetary Order with leave to reapply.

Conclusion

The landlord’s 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: December 21, 2016

Residential Tenancy Branch