



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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 10, 2017, the landlord sent Tenant J.M. 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. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that Tenant J.M. has been deemed served with the Direct Request Proceeding documents on January 15, 2017, the fifth day after their registered mailing.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 10, 2017, the landlord sent Tenant K.M. 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.

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 Proof 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 Tenant K.M. on November 01, 2013, indicating a monthly rent in the amount of \$1,000.00, due on the first day of the month for a tenancy commencing on November 01, 2013;
- A copy of an addendum to the residential tenancy agreement which was signed by the landlord and both tenants on November 01, 2013, confirming a monthly rent in the amount of \$1,000.00, due on the first day of the month for a tenancy commencing on November 01, 2013
- 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 January 04, 2017, and left with Tenant J.M. on January 04, 2017, with a stated effective vacancy date of January 13, 2017, for \$475.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was left with Tenant J.M. at 4:00 p.m. on January 04, 2017. 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

I find that Tenant J.M. is not named on the 10 Day Notice to End Tenancy. I further find that the special details section of the Proof of Service Notice to End Tenancy indicates that Tenant K.M. has moved out of the rental unit.

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in accordance with section 88 of the *Act*.

Section 88 of the *Act* allows for service by either sending the 10 Day Notice to the tenant by registered mail, leaving a copy with the tenant, leaving a copy in the tenant's mailbox or mail slot, attaching a copy to the tenant's door or *leaving a copy with an adult who apparently resides with the tenant*.

I find that Tenant K.M. no longer resides with Tenant J.M. and that the service requirement of section 88 of the *Act* has not been met in regards to the 10 day Notice.

For the above reason, I find that the 10 Day Notice has not been served in accordance with section 88 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 January 04, 2017, without leave to reapply. The 10 Day Notice of January 04, 2017, is cancelled and of no force or effect.

For the same reason listed above, I dismiss the landlord's application for a monetary Order with leave to reapply.

The landlord must reissue the 10 Day Notice and serve it in one of the ways prescribed by section 88 of the *Act*, or according to Residential Tenancy Policy Guideline #39.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of January 04, 2017 is dismissed, without leave to reapply.

The 10 Day Notice of January 04, 2017, 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: January 27, 2017

Residential Tenancy Branch