



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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 26, 2017, the landlords sent the tenant the Notice 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 Number to confirm this mailing. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on January 31, 2017, the fifth day after their registered mailing.

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 Proof of Service of the Notice of Direct Request Proceeding served to the tenant;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on March 27, 2016, indicating a monthly rent of \$1,650.00, due on the fifteenth day of the month for a tenancy commencing on April 15, 2015;
- 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 January 9, 2017, and posted to the tenant's door on January 9, 2017, with a stated effective vacancy date of January 14, 2017, for \$1,650.00 in unpaid rent that was due January 1, 2017.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was posted to the tenant's door at 4:00 pm on January 9, 2017. 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

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on January 12, 2017, three days after its posting.

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 agreement submitted by the landlords indicates that the monthly rent is due on the fifteenth of every month. I further find that the landlords have issued the 10 Day Notice on January 9, 2017, before the day that the monthly rent was due, which is not in accordance with section 46 of the *Act*.

I find that the landlords have not complied with the provisions of section 46 of the *Act*, in regards to the 10 Day Notice issued to the tenant.

Therefore, I dismiss the landlords' application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of January 9, 2017, without leave to reapply. The 10 Day Notice of January 9, 2017 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, I dismiss the landlords' application for a Monetary Order with leave to reapply.

Conclusion

The landlords' application for an Order of Possession on the basis of the 10 Day Notice of January 9, 2017 is dismissed, without leave to reapply. The 10 Day Notice of January 9, 2017, is cancelled and of no force or effect.

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

I dismiss the landlords' 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 31, 2017

Residential Tenancy Branch