



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OCEANWOOD PROPERTIES CORP
and [tenant name suppressed to protect privacy]

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 February 8, 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 February 13, 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 May 2, 2016, indicating a monthly rent of \$1,300.00, due on the first day of the month for a tenancy commencing on May 1, 2016;
- A copy of a receipt dated January 12, 2017, for \$1,300.00 of rent, paid by the tenant, which the landlord has indicated “does not constitute reinstatement of your rental agreement”;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- The Monetary Order Worksheet noted that \$1,300.00 of the \$1,300.00 identified as owing in the 10 Day Notice was paid on January 12, 2017; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 4, 2017, and posted to the tenant’s door on January 4, 2017, with a stated effective vacancy date of January 15, 2017, for \$1,300.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was posted to the tenant’s door on January 4, 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 7, 2017, three days after its posting.

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 a Direct Request proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice was issued to the tenant. Therefore, within the purview of the Direct Request process, I cannot hear the portion of the landlords’ application for a

monetary claim arising from rent owed for February 2017. For this reason, I dismiss the portion of the landlords' monetary claim for unpaid rent owing from February 2017, with leave to reapply.

Section 46(4) (a) of the *Act*, regarding a landlord's notice for non-payment of rent, states that "within 5 days after receiving a notice under this section, the tenant may pay the overdue rent , in which case the notice has no effect."

I find that the fifth day for the tenant to have either paid the rent or disputed the notice is January 12, 2017. I further find that the Monetary Order Worksheet and receipt submitted by the landlords indicates that the tenant has paid the total rent that was owed on the 10 Day Notice on January 12, 2017, within the five day days allowed by the *Act*.

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 4, 2017, without leave to reapply.

The 10 Day Notice of January 4, 2017 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 January 4, 2017 is dismissed, without leave to reapply. The 10 Day Notice of January 4, 2017, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The landlord's application for a Monetary Order for unpaid rent owing from February 2017 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: February 14, 2017

Residential Tenancy Branch

