



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

The landlords submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on January 31, 2017, the landlord posted the Notices of Direct Request Proceeding to the door of the rental unit. The landlords had a witness sign the Proofs of Service of the Notices of Direct Request Proceeding to confirm this service. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on February 3, 2017, the fifth day after their posting.

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 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 one of landlords and one of the tenants on August 6, 2016, indicating a monthly rent of \$1,050.00, due on the first day of the month for a tenancy commencing on September 1, 2016;
- 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 11, 2017, with a stated effective vacancy date of January 27, 2017, for \$1,100.00 in unpaid rent and \$150.74 in unpaid utilities.

Analysis

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 landlords must prove that they served the tenants 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 tenants by registered mail, leaving a copy with the tenants, leaving a copy in the tenants' mailbox or mail slot, attaching a copy to the tenants' door or leaving a copy with an adult who apparently resides with the tenants.

In the special details section of the Proof of Service Notice to End Tenancy, the landlords have indicated that they placed the 10 Day Notice on the kitchen table inside the rental unit. I find that by issuing the 10 Day Notice in this manner, the landlords have not served the tenants in accordance with section 88 of 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 11, 2017, without leave to reapply.

The 10 Day Notice of January 11, 2017, is cancelled and of no force or effect.

For the same reason listed above, I dismiss the landlords' application for a Monetary Order with leave to reapply.

The landlords 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, if the landlords want to apply through the Direct Request process.

Conclusion

The landlords' application for an Order of Possession on the basis of the 10 Day Notice of January 11, 2017 is dismissed, without leave to reapply.

The 10 Day Notice of January 11, 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: February 03, 2017

Residential Tenancy Branch