



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 April 5, 2017, the landlords sent the tenants the Notices of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings.

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 the landlords and Tenant C.B. on February 27, 2013, and Tenant S.B. on March 1, 2013,

indicating a monthly rent of \$950.00, due on the first day of the month for a tenancy commencing on March 1, 2013;

- A copy of a Notice of Rent Increase form showing the rent being increased from \$950.00 to the current monthly rent amount of \$975.00;
- 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 February 13, 2017, with a stated effective vacancy date of February 23, 2017, for \$475.00 in unpaid rent;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 24, 2017, and posted to the tenants' door on March 24, 2017, with a stated effective vacancy date of April 2, 2017, for \$975.00 in unpaid rent; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 2, 2017, and posted to the tenants' door on April 2, 2017, with a stated effective vacancy date of April 11, 2017, for \$975.00 in unpaid rent;

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 they served the tenants with the Notices of Direct Request proceeding with all the required inclusions as indicated on the Notices 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 landlords on the Proofs of Service of the Notices of Direct Request Proceeding are for 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, they do not meet the definition of registered mail as defined under the *Act*. Since I find that the landlords have not served the tenants with notice of this application in accordance with Section 89 of the *Act*, I dismiss the landlords' application for an Order of Possession based on unpaid rent and a Monetary Order with leave to reapply.

Conclusion

The landlords' 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: April 10, 2017

Residential Tenancy Branch