



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 29, 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. 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 May 4, 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 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 the tenants on May 8, 2016, indicating a bi-monthly rent of \$725.00, due on the first and fifteenth days of the month for a tenancy commencing on May 1, 2016;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy;
- The Monetary Order Worksheet noted that \$725.00 of the \$725.00 identified as owing in the 10 Day Notice was paid on April 24, 2017; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 22, 2017, and posted to the tenants' door on April 22, 2017, with a stated effective vacancy date of May 5, 2017, for \$725.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was posted to the tenants' door at 7:00 pm on April 22, 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 have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on April 25, 2017, three days after its posting.

Section 46 (4) of the *Act* states that, within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice.

I find that the fifth day for the tenants to have either paid the rent or disputed the notice is April 30, 2017. I further find that the landlords applied for dispute resolution on April 28, 2017, before the last day that the tenants had to dispute the 10 Day Notice.

The earliest date that the landlords could have applied for dispute resolution was May 2, 2017, meaning that the landlords made their application for dispute resolution too early.

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 April 22, 2017, with leave to reapply.

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 April 22, 2017 is dismissed, with leave to reapply.

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: May 05, 2017

Residential Tenancy Branch