



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 May 20, 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 May 25, 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 April 29, 2016, indicating a monthly rent of \$1,100.00, due on the first day of the month;

- 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) for \$4,400.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was personally served to a man in the house at 12:00 pm on May 2, 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

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.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

*(a) **be signed and dated** by the landlord or tenant giving the notice,*

(b) give the address of the rental unit,

*(c) **state the effective date of the notice**,...and*

(e) when given by a landlord, be in the approved form...

I have reviewed all documentary evidence and I find that the 10 Day Notice submitted by the landlords is not signed or dated by the landlords. The landlords have submitted a corrected copy of the 10 Day Notice that includes the date and signature, however in a Direct Request Proceeding I must be satisfied that the copy submitted as evidence is identical to the 10 Day Notice received by the tenant.

I also note that there is no effective date (the day when the tenant must move out of or vacate the site) on either copy of the 10 Day Notice submitted by the landlords. I find that this omission invalidates the 10 Day Notice as the landlords have not complied with the provisions of section 52 of the *Act*. It is possible to amend an incorrect date on the 10 Day Notice, but the *Act* does not allow an adjudicator to input a date where none is written in.

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 May 2, 2017, without leave to reapply.

The 10 Day Notice of May 2, 2017, is cancelled and of no force or effect.

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

Conclusion

The landlords' application for an Order of Possession on the basis of the 10 Day Notice of May 2, 2017, is dismissed, without leave to reapply.

The 10 Day Notice of May 2, 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: May 26, 2017

Residential Tenancy Branch