



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

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 landlord for an Order of Possession based on unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 28, 2017, the landlord personally served Tenant Tr.E. the Notice of Direct Request Proceeding. The landlord had Tenant Tr.E. and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89(1) of the *Act*, I find that Tenant Tr.E. was duly served with the Direct Request Proceeding documents on October 28, 2017.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 28, 2017, the landlord served Tenant Ta.E. the Notice of Direct Request Proceeding by handing the documents to Tenant Tr.E. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89(2) of the *Act*, I find that Tenant Ta.E. was duly served with the Direct Request Proceeding documents on October 28, 2017.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on May 1, 2013, indicating a monthly rent of \$1,000.00, due on the first day of each month for a tenancy commencing on May 1, 2013;
- Three copies of Notice of Rent Increase forms showing the rent being increased from \$1,000.00 to the current monthly rent amount of \$1,078.00;
- 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 October 2, 2017, naming Tenant Tr.E., with a stated effective vacancy date of October 15, 2017, for \$1,356.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenants' door at 2:00 pm on October 2, 2017.

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...

The 10 Day Notice includes an incorrect address for the rental unit, which effectively gives notice to the tenants to move out of an address that is not the correct address of the rental unit as established in the tenancy agreement. I find that this discrepancy invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of October 2, 2017, without leave to reapply.

The 10 Day Notice of October 2, 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 October 2, 2017, is dismissed, without leave to reapply.

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

This tenancy continues until it is ended in accordance with the *Act*.

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: October 31, 2017

Residential Tenancy Branch