



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 January 17, 2019, the landlord sent Tenant M.B. the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that Tenant M.B. is deemed to have been served with the Direct Request Proceeding documents on January 22, 2019, the fifth day after their registered mailing.

The landlord has not submitted a copy of the Proof of Service of the Notice of Direct Request Proceeding to establish service of the Notice of Direct Request Proceeding documents to Tenant J.H.

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 a landlord who is not the applicant and the tenants on June 11, 2016, indicating a monthly rent of \$800.00, due on the first day of each month for a tenancy commencing on July 1, 2016;

- A copy of a letter showing the assignment of agent responsibilities from the landlord named in the tenancy agreement to the landlord applying for dispute resolution;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 24, 2018, for \$832.00 in unpaid rent that was due on January 1, 2019. The 10 Day Notice provides 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 on the stated effective vacancy date of January 10, 2019;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenants by registered mail on January 1, 2019;
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the 10 Day Notice was in fact sent to the tenants on December 24, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day **after** the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find that the tenancy agreement indicates that the monthly rent is due on the first of every month. I further find that the landlord has issued the 10 Day Notice in the month of December 2018, prior to the day that the monthly rent was due for January 2019, which is not in accordance with section 46 of the *Act*.

I find that the landlord has not complied with the provisions of section 46 of the *Act*, in regards to the 10 Day Notice issued to the tenants.

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 December 24, 2018, without leave to reapply.

The 10 Day Notice of December 24, 2018, 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 dated December 24, 2018, is dismissed, without leave to reapply.

The 10 Day Notice dated December 24, 2018, 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: January 22, 2019

Residential Tenancy Branch