



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 48(4) of the *Manufactured Home Park Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the landlords for an Order of Possession based on unpaid rent.

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on January 9, 2021, the landlords personally served the tenant the Notice of Direct Request Proceeding. The landlords had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 39 and 48 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on January 28, 2019, indicating a monthly rent of \$1,700.00, due on the second day of each month for a tenancy commencing on February 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 6, 2021, for \$1,700.00 in unpaid rent and \$1,700.00 in unpaid utilities. The 10 Day Notice provides 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 on the stated effective vacancy date of January 10, 2021; and
- A copy of a witnessed Proof of Service Notice to End Tenancy which indicates that the 10 Day Notice was posted to the tenant's door on January 6, 2021.

Analysis

I note that the landlords have indicated in their Application for Dispute Resolution that the tenancy is governed by the *Manufactured Home Park Tenancy Act (the MHPTA)*. However, I find that 10 Day Notice indicates that it was issued under the *Residential Tenancy Act (the RTA)*.

I find that, while this discrepancy raises a question that cannot be addressed in a Direct Request Proceeding, another issue exists with the application which remains the same, regardless which *Act* applies.

Section 90 of the *RTA* and section 83 *MHPTA* indicate that a document attached to a tenant's door is considered received three days later. I find that the tenant was deemed served with the 10 Day Notice on January 9, 2021, three days after its posting.

Section 46(4) of the *RTA* and section 39(4) of the *MHPTA* state 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 landlords applied for dispute resolution on January 7, 2021, before the last day that the tenant had to dispute the 10 Day Notice and that the landlords made their application for dispute resolution too early.

Therefore, the landlords' application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated January 6, 2021 is dismissed, with leave to reapply.

Conclusion

I dismiss the landlords' application for an Order of Possession based on the 10 Day Notice dated January 6, 2021, 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: January 27, 2021

Residential Tenancy Branch