



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 3, 2011 the landlord served the persons listed on his application as tenants with the Notice of Direct Request Proceeding by registered mail. Based on the written submissions of the landlord, I find that the tenants listed on the application have been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent and to a Monetary Order for unpaid rent, pursuant to sections 46, 55, and 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the respondents;
- A copy of a residential tenancy agreement which was apparently signed by the male respondent only on November 1, 2010, for the monthly rent of \$900.00 due on the 1st day of every month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, August 27, 2011, with an effective vacancy date of September 3, 2011 due to \$1,800.00 in total unpaid rent, listed as being due in the amount of \$900.00 on July 10 and \$900.00 on August 10, 2011.

Documentary evidence filed by the landlord indicates that the tenants/respondents were served the 10 Day Notice to End Tenancy for Unpaid Rent via personal delivery on August 27, 2011. Under the Act, the Notice self corrects to September 6, 2011, for an effective vacancy date.

The Notice states that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end. I have no evidence before me that the tenant either paid the rent in full or applied to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

The Landlord has provided a copy of the 10 Day Notice to End Tenancy which was issued on August 27, 2011, and states “you have failed to pay rent in the amount of \$900.00 that was due on July 10, 2011, and \$900.00 which was due on August 10, 2011.” The tenancy agreement entered into evidence states that rent is due on the 1st day of each month.

Additionally, the female respondent listed on the landlord’ application is not listed in the tenancy agreement.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The landlord is seeking to end the tenancy due to this breach; however, the landlord has the burden of proving that the respondents/tenants were served with the 10 day Notice to End Tenancy which meets the form, content, and service under sections 52 and 88 of the *Residential Tenancy Act*.

I find that the 10 Day Notice issued by the landlord does not meet the requirements of the Act as the rent in any month is due on the 1st day of the month and not the 10th day as listed on the Notice. Therefore the Notice is not enforceable as the rent due date listed is invalid.

I further find the landlord has listed a respondent who is not listed in the tenancy agreement as being obligated to pay the landlord rent, according to the submitted documents.

Based on the above I find that this application and written submissions do not meet the requirements for the Direct Request process and I hereby dismiss the Landlord’s application without leave to reapply.

Conclusion

I HEREBY ORDER that the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated August 25, 2011, and issued August 27, 2011, is without force or effect.

I HEREBY DISMISS the landlord's application, without 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: September 13, 2011.

Residential Tenancy Branch