



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DIRECT REQUEST DECISION

Dispute Codes : OPR, MNR

Introduction

The 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 for rental arrears.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 12, 2011, the landlord served the tenant with the Notice of Direct Request in person.

Based on the written submissions of the landlord, I find the tenant has been duly 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 and a monetary Order for rental arrears pursuant to 55 and 67 of the *Residential Tenancy Act (the Act)*. I have reviewed all documentary evidence.

Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a copy of the Notice to End Tenancy for Unpaid Rent and a "Proof of Service" form stating that the Notice was served to the tenant in person on September 3, 2011 at 10:00 a.m. in front of a witness.

The purpose of serving documents under the *Act* is to notify the person of a failure to comply with the Act and of their rights in response. The landlord, seeking to end the tenancy has the burden of proving that the tenant was served with the Notice to End Tenancy and I find that the landlord has met this burden.

Analysis

Submitted into evidence was a copy of an application for tenancy. However, no copy of a tenancy agreement was submitted into evidence. This was an application to proceed by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the Act. The Fact Sheet containing directions and the requirements to apply for a resolution under this section states that the following mandatory documentation must accompany the Application:

- Copy of the 10 Day Notice to End Tenancy
- Copy of the Tenancy Agreement
- Proof of Service of the 10 Day Notice to End Tenancy

I find that this application did not include a copy of a compliant tenancy agreement pursuant to section 13 of the Act. Section 13 sets out the mandatory terms that must be included within the tenancy agreement. Consequently I find that this matter may not proceed by way of direct proceeding. It is therefore necessary to dismiss this application, and I do so granting the landlord leave to reapply.

The landlord is at liberty to make an application to pursue the matter through a regular conference hearing that would permit verbal testimony to be given regarding the specific terms of the tenancy agreement between the parties.

Conclusion

I hereby dismiss the landlord's application with leave to reapply for a participatory hearing in which testimony can be given with respect to the tenancy agreement.

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 19, 2011.

Residential Tenancy Branch