Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPR, MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 29, 2011 at 4:10 p.m. the landlord served the tenant with the Notice of Direct Request Proceeding personally.

Based on the written submissions of the landlord, I find that the tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

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, 67, and 72 of the *Act.*

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on April 11, 2011 for a month to month tenancy beginning on April 15, 2011 for the monthly rent of $1,050.00 due on the each month and a security deposit of $525.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 23, 2011 with an effective vacancy date of October 3, 2011 due to $325.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the month of September 2011 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent personally on September 23, 2011 at 11:30 a.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due according to the tenancy agreement. The tenancy agreement submitted into evidence does not stipulate a day in the month that rent is due.

As the Direct Request process does not include a participatory hearing I do not have the ability to ask either of the parties any questions when there are issues that are unclear. I find that I cannot determine the day in the month that rent is due and as such I find the Direct Request process is not a suitable method for adjudication of this Application.

Conclusion

For the reasons noted above, I dismiss this Application 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: October 03, 2011.

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Residential Tenancy Branch