



Dispute Resolution Services

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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 October 18, 2012 the landlord served **both tenants** with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the written submissions of the landlord, I find that the tenants have 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 July 28, 2010 for a 1 year fixed term tenancy beginning on August 1, 2010 that converted to a month to month tenancy on August 1, 2011 for the monthly rent of \$1,000.00 and a security deposit of \$500.00 was paid. The tenancy agreement does not stipulate the day of the month that rent is due; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on October 5, 2012 with an effective vacancy date of October 18, 2012 due to \$1,000.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the month of October 2012 and that the tenants were served the 10 Day

Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on October 5, 2012 at 6:00 p.m. and that this service was witnessed by a third party.

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

Analysis

I have reviewed all documentary evidence and find that because the tenancy agreement submitted by the landlord does not provide evidence of a due date for rent that could be confirmed through oral testimony, and because the Direct Request process does not allow an opportunity for any oral testimony to be heard, I find the Direct Request process is not a suitable forum for the adjudication of the landlord's Application.

Conclusion

For the reasons noted above I dismiss the Application with leave to reapply through the participatory hearing process.

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 24, 2012.

Residential Tenancy Branch