



Dispute Resolution Services

Page: 1

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 for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 10, 2012 at 1:38 p.m. the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. Canada Post receipts were provided in the Landlord's evidence.

Issue(s) to be Decided

Does this application meet the requirements to be determined through a Direct Request Proceeding?

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 Tenant with Canada Post receipts and tracking information that indicates the package is available for pick up by the Tenant; and
- A copy of a residential tenancy agreement which was signed by all parties for a month to month tenancy that began on July 1, 2012 for the monthly rent of \$1,200.00 due on 1st of the month and a security deposit of \$600.00 plus a pet deposit of \$600.00 were paid June 17, 2012; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, November 12, 2012, with an effective vacancy date listed as November 28, 2012, due to \$1,200.00 in unpaid rent that was due on November 1, 2012.

- A copy of a proof of service form and the Canada Post Receipts and tracking information regarding the service of the 10 Day Notice. The Canada Post tracking document indicates that the envelope containing the 10 Day Notice will be returned to sender if not picked up. This tracking information document was faxed to the *Residential Tenancy Branch* on December 7, 2012.

Analysis

After careful consideration of the aforementioned I find that although the Landlord served the Tenant the 10 Day Notice in accordance with the Act, I cannot deem that the Tenant received the 10 Day Notice, because the evidence provided by the Landlord indicates the Tenant has not receive it and the envelope will be returned to sender.

Furthermore, as this application was brought forth in a non-participatory, ex-parte, proceeding, there is no opportunity to clarify what communication, if any, has occurred between the parties since the 10 Day Notice was issued. Therefore, I find this matter does not meet the requirements of a Direct Request Proceeding, and it is hereby dismissed, with leave to reapply for a participatory hearing.

Conclusion

I HEREBY DISMISS this application with leave to reapply.

No findings of fact or law have been made pertaining to the validity of the 10 Day Notice.

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: December 12, 2012.

Residential Tenancy Branch