



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 Landlords for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted an incomplete, signed Proof of Service of the Notice of Direct Request Proceeding which declares that the Landlords served the Tenant with the Notice of Direct Request Proceeding by posting it to the Tenant's door. There was no date or time listed on the Proof of Service Form as to when the Direct Request Documents were posted to the door.

Section 89 of the *Residential Tenancy Act* determines the method of service for special documents. The Landlords have applied for an order of possession and a monetary Order which requires that the Landlord serve the respondent Tenant with the notice for dispute resolution in accordance with section 89 (1) of the Act [Section 89 of the Act has been pasted at the end of this decision for further reference].

Section 89(2)(c) provides that if the notice of direct request application was posted at the rental unit, service is met only for the request of an Order of Possession. Furthermore, the Proof of Service Document stipulates if service is by posting: "*NOTE: Do not use this method if requesting a monetary order*".

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

Background and Evidence

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

- A copy of the incomplete Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of a residential tenancy agreement which appears to have been amended to remove the name of a second tenant. The tenancy agreement indicates the parties entered into a fixed term tenancy that began on August 1, 2011, and switched to a month to month tenancy after August 1, 2012, for the monthly rent of \$1,080.00 which is payable on the first of each month. The tenancy agreement signature page also appears to be amended to remove a tenant's name that is not named in this dispute and that person's signature is still displayed on the tenancy agreement. That being said, there does not appear to be a signature on the tenancy agreement from the Tenant named in this dispute;
- Two 10 Day Notices to End Tenancy for Unpaid Rent which were both issued on, March 3, 2014, with an effective vacancy date of March 13, 2014, due to \$1,080.00 in unpaid rent that was due February 1, 2014 and due to \$1,080.00 in unpaid rent that was due March 1, 2014;

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notices to End Tenancy for Unpaid Rent on March 3, 2014, at 6:35 p.m. when they were posted to the Tenant's door, in the presence of a witness.

Analysis

The Direct Request procedure is based upon written submissions only and requires that the submissions be sufficiently clear, valid and supported by evidence in order to succeed.

As noted above in the introduction the Landlords have filed seeking an Order of Possession and a Monetary Order; however, they served the Notice of Direct Request Proceeding by posting them on the door, which does not meet the service requirements set out in section 89 of the Act.

I find the evidence with respect to the tenancy agreement to be lacking. The Landlord submitted copies of a tenancy agreement that has been altered and does not appear to be signed by the Tenant who is the named respondent to this dispute.

Although oral terms contained in, or form part of, tenancy agreements and may still be recognized and enforced in a participatory hearing they do not meet the requirements for a Direct Request Proceeding. A **signed** written tenancy agreement must be

submitted as evidence that a tenancy agreement exists when an application is made through the Direct Request process.

Based on the aforementioned I find there to be insufficient evidence to proceed through the direct request process and I dismiss the Landlords' application with leave to reapply.

Conclusion

I HEREBY DISMISS this application, with leave to reapply, through a participatory hearing.

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: March 28, 2014

Residential Tenancy Branch

Section 89 of the *Residential Tenancy Act*

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(3) A notice under section 94.21 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

