



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "*Act*"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceedings which declares that on September 03, 2015, the landlord sent the tenants the Notices of Direct Request Proceeding by registered mail to the rental unit. The landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- Two copies of the Proof of Service of the Notice of Direct Request Proceedings served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and Tenant JA.M. on March 26, 2015, indicating a monthly rent of \$1,150.00, due on the first day of the month for a tenancy commencing on April 01, 2015;

- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 23, 2015, and personally handed to Tenant J.U.M. on August 23, 2015, with a stated effective vacancy date of September 03, 2015, for \$1,165.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to Tenant J.U.M. at on August 23, 2015. The 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on August 23, 2015.

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenants with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per subsections 89 (1) and (2) of the *Act* which permit service “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.” The definition of registered mail is set out in section 1 of the *Act* as “any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.”

I find that the tracking numbers provided by the landlord on the Proof of Service Notice of Direct Request Proceedings are for packages sent by Canada Post’s Xpress Post mailing, which may or may not require a signature from the individual to confirm delivery of the document to the person named as the respondent. In this case, Canada Post’s Online Tracking System shows that a signature was not required for the delivery of these Xpress Post mailings and, as such, do not meet the definition of registered mail as defined under the *Act*.

Since I find that the landlord has not served the tenants with the notices of this application in accordance with Section 89 of the *Act*, I dismiss the landlord's application for an Order of Possession based on unpaid rent and a monetary Order with leave to reapply.

I note that even if the landlord had served the Notices of Direct Request Proceeding in accordance with the *Act*, I still would not have been able to issue any orders for the landlord as Tenant JU.M., who is named on the 10 Day Notice, did not sign the tenancy agreement and Tenant JA.M., who signed the tenancy agreement, was not named on the 10 Day Notice. The landlord may want to consider applying for a participatory hearing as the Direct Request process does not allow for the clarification of facts, which may be necessary in this situation.

Conclusion

The landlord's application is dismissed 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: September 08, 2015

Residential Tenancy Branch

