



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 Landlord on September 09, 2015 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 September 11, 2015, the Landlord served each Tenant by registered mail. A Canada Post receipt and registered mail tracking receipts dated September 11, 2015, for each Tenant, were provided in the Landlord's evidence. Based on the written submissions of the Landlord, I find that each Tenant is deemed served with the Dispute Resolution Direct Request Proceeding documents on September 16, 2015, five days after they were mailed, pursuant to section 90 of the Act.

Issue(s) to be Decided

Has the Landlord proven entitlement to an Order of Possession and a Monetary Order pursuant to section 55(4) of the *Residential Tenancy Act*?

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 each Tenant and corresponding Canada Post registered mail tracking receipts;
- A copy of the Landlord's Application for Direct Request and the Monetary Order Worksheet listing a claim of \$435.00 for July 1, 2014 rent;
- A copy of a residential tenancy agreement which was signed by all parties for a fixed term tenancy that began on March 1, 2015 and is scheduled to end at the

end of February 2016, for the monthly rent of \$1,900.00 which is payable on or before the first of each month;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, July 15, 2015, listing an effective vacancy date of July 25, 2015 due to \$435.00 in unpaid rent;
- A proof of service document indicating the 10 Day Notice was served on July 15, 2015 by registered mail;
- A Canada Post cash register receipt and an "Xpresspost" delivery notice which indicates an Xpresspost package, not requiring a signature, was delivered on July 16, 2015; and
- A payment receipt dated July 24, 2015 listing a payment from the Tenant of \$664.00 which was received by the Landlord for "Use and Occupancy".

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 88 of the *Act* stipulates methods of service for documents other than an application for Dispute Resolution. One of those methods listed in Section 88(c) allows for service by sending a copy by ordinary mail or 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.

Section 90(a) of the *Act* provides that a document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received if given or served by mail, on the 5th day after it is mailed.

In this case the Xpresspost delivery did not require a signature, did not have to be personally delivered or handed to a person, and in those cases the package is often left in the recipient's mailbox. Therefore, I do not accept that the 10 Day Notice was served by registered mail as declared by the Landlord. That being said, I conclude that service via Xpresspost is equivalent to service by regular mail.

Based on the above, I conclude the Tenants were deemed sufficiently served with a copy of the 10 Day notice, pursuant to section 88(c) of the *Act*, via regular mail. The tracking document simply shows when the Xpresspost package was delivered to the address which could mean the date it was left in the mailbox. It is not evidence of when the Tenants actually received the package containing the 10 Day Notice.

Based on the above, I find the Tenants were deemed to have received the 10 Day Notice on July 20, 2015, five days after it was mailed by Xpresspost, pursuant to section 90 of the *Act*. Accordingly, the Tenants had until July 25, 2015 to pay the outstanding amount of \$435.00.

The Landlord submitted evidence of a receipt which states that on July 24, 2015 the Tenant D.G. paid the Landlord \$664.00. This payment was within the stipulated five day period, pursuant to section 46 of the *Act*. Therefore, I conclude the 10 Day Notice was cancelled and was no longer of any force or effect.

Based on the above, I find there was insufficient evidence to prove the merits of the Landlord's application and it is dismissed in its entirety, without leave to reapply.

Conclusion

The Landlord did not provide sufficient evidence to prove the merits of their application and the application was dismissed, without 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 17, 2015

Residential Tenancy Branch

