



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes OPR

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.

The landlord submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on August 29, 2017, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on September 3, 2017, the fifth day after their registered mailing.

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*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on January 12, 2018, indicating a monthly rent of \$1,145.00, due on the first day of each month for a tenancy commencing on February 1, 2017;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 14, 2017, with a stated effective vacancy date of August 27, 2017, for \$1,640.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenants' door at 9:48 am on August 14, 2017. 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

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

Section 46(4)(b) of the *Act*, regarding a landlord's notice for non-payment of rent, states that "within 5 days after receiving a notice under this section, the tenant may dispute the notice by making an application for dispute resolution." When making an application for dispute resolution, the tenant is required to provide the legal name of the respondent, the landlord who issued the 10 Day Notice.

I find that the 10 Day Notice submitted by the landlord does not provide the legal name of the landlord. I also note that the name of the person who signed the 10 Day Notice does not match the landlord's name on the Application for Dispute Resolution or any other documentation submitted with the Application for Dispute Resolution. There is also no documentation indicating that the person who signed the 10 Day Notice is authorized to act on behalf of the landlord applying for dispute resolution.

I find that this omission sufficiently invalidates the 10 Day Notice as the landlord has not provided the tenants with the opportunity to dispute the 10 Day Notice in accordance with Section 46(4)(b) of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of August 14, 2017, without leave to reapply.

The 10 Day Notice of August 14, 2017 is cancelled and of no force or effect.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of August 14, 2017, is dismissed, without leave to reapply.

The 10 Day Notice of August 14, 2017, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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 05, 2017

Residential Tenancy Branch