



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 13, 2017, the Landlord sent the Tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The Landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

Based on the written submissions of the Landlord and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant has been deemed served with the Direct Request Proceeding documents on September 18, 2017, the fifth day after the 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 Tenant on October 25, 2016, indicating a monthly rent of \$1,800.00, due on the thirtieth or thirty first day of each month for a tenancy commencing on November 1, 2016;

- 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 31 2017, with a stated effective vacancy date of September 13, 2017, for \$1,800.00 in unpaid rent.

Witnessed documentary evidence filed by the Landlord indicates that the 10 Day Notice was attached to the Tenant's door at 11:00 p.m. on August 31 2017. The 10 Day Notice states that the Tenant 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

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.

Paragraph 13(2)(f)(v) of the *Act* establishes that a tenancy agreement is required to identify "the day in the month, or in the other period on which the tenancy is based, on which the rent is due."

Section 46 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The residential tenancy agreement submitted by the Landlord has indicated two different days in the month on which the rent is due. In order to determine the validity of the 10 Day Notice a Landlord cannot ask for rent before the day it is due. The landlord has issued the 10 Day Notice on one of the days that the monthly rent is identified as being due, which is not in accordance with section 46 of the *Act*.

I find that the Landlord has not complied with the provisions of section 46 of the *Act*, in regards to the 10 Day Notice issued to the tenant.

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 31, 2017~~^{April 02}, without leave to reapply. The 10 Day Notice of August 31, 2017 is cancelled and of no force or effect.

For the same reasons as outlined above, I dismiss the Landlord's application for a monetary Order with leave to reapply.

Conclusion

The Landlord's application for an Order of Possession on the basis of the 10 Day Notice of August 31, 2017 is dismissed, without leave to reapply. The 10 Day Notice of August 31, 2017, is cancelled and of no force or effect.

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

I dismiss the Landlord's application for a monetary Order 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 ~~2017~~²⁰²¹, 2017

Residential Tenancy Branch