



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR FFL

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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 18, 2017, Landlord D.N. personally served Tenant T.R. the Notice of Direct Request Proceeding. Landlord D.N. had Tenant T.R. sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlords and in accordance with section 89 of the *Act*, I find that Tenant T.R. has been duly served with the Direct Request Proceeding documents on October 18, 2017, the day it was personally served him.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 18, 2017, Landlord D.N. sent Tenant J.P. the Notice of Direct Request Proceeding by registered mail to the rental unit. Landlord D.N. provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submission of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that Tenant J.P. will have been deemed served with the Direct Request Proceeding documents on October 23, 2017, the fifth day after their registered mailing.

Issue(s) to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- An unsigned copy of a residential tenancy agreement, indicating a monthly rent of \$1,000.00, due on the first day of each month for a tenancy commencing on March 01, 2017;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of an unsigned 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 12, 2017, with a stated effective vacancy date of October 12, 2017, for \$1,600.00 in unpaid rent.

Analysis

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) **be signed** and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,...and*
- (e) when given by a landlord, be in the approved form...*

I have reviewed all documentary evidence and I find that the 10 Day Notice is not signed by the landlord(s). I find that this omission invalidates the 10 Day Notice as the landlords have not complied with the provisions of section 52 of the *Act*.

Furthermore, I note the following deficiencies that would not have made this matter suitable for the Direct Request Process, as follows:

- Paragraph 12 (1) (b) of the Residential Tenancy Regulations establishes that a tenancy agreement is required to “be signed and dated by both the landlord and the tenant.” In that regard, I note the residential tenancy agreement submitted by the landlords is not signed by the landlords or the tenants, which is a requirement of the Direct Request Process.
- The landlords must prove that they served the tenants with the 10 Day Notice in a manner that is considered necessary as per Sections 71(2) (a) and 88 of the *Act*. Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request.

PROOF OF SERVICE

10-Day Notice to End Tenancy

The landlord must prove the tenant was served with the 10-Day Notice to End Tenancy.

A landlord must serve the tenant with a 10-Day Notice to End Tenancy by:

- registered mail;
- in person, with a witness verifying it was served; or
- by posting it on the tenant’s door or in an equally conspicuous place, with a witness verifying it was served.

Proof of service of the 10 Day Notice to End Tenancy may take the form of:

- registered mail receipt and printed tracking report;
- a receipt signed by the tenant, stating they took hand delivery of the document(s); or
- a witness statement that they saw the landlord deliver the document(s).

In that regard, I note the landlords did not prove service of the 10 Day Notice in one of the methods set out above.

Therefore, I dismiss the landlords’ application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of October 12, 2017, without leave to reapply.

The 10 Day Notice of October 12, 2017 is cancelled and of no force or effect.

For the same reasons identified with respect to the 10 Day Notice, the landlords’ application for a Monetary Order for unpaid rent is dismissed, with leave to reapply.

As the landlords were not successful, I dismiss their application for an Order for the recovery of the filing fee, without leave to reapply.

Conclusion

The landlords' application for an Order of Possession on the basis of the 10 Day Notice of October 12, 2017, is dismissed, without leave to reapply.

The 10 Day Notice of October 12, 2017, is cancelled and of no force or effect.

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

I dismiss the landlords' application for a Monetary Order for unpaid rent, with leave to reapply.

I dismiss the landlords' application for an Order for the recovery of the filing fee, 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: October 20, 2017

Residential Tenancy Branch