



Dispute Resolution Services

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

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 24, 2017, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord has not provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this 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*?

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

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 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 on August 03, 2017 and by the tenant on August 07, 2017, indicating a monthly rent of \$1,300.00, due on the sixth day of each month for a tenancy commencing on August 06, 2017;

- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of an undated and unsigned 10 Day Notice to End Tenancy for Unpaid Rent, with a stated effective vacancy date of October 28, 2017, for \$3,900.00 in unpaid rent (the “10 Day Notice”).

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 and dated by the landlord. I find that these omissions invalidate the 10 Day Notice as the landlord has not complied with the provisions of section 52 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, without leave to reapply.

The 10 Day Notice is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, the landlord's application for a Monetary Order is dismissed, with leave to reapply.

Section 88 of the *Act* allows for service of the 10 Day Notice to the tenant by any of the following methods: registered mail; leaving a copy with the tenant; leaving a copy in the tenant's mailbox or mail slot; attaching a copy to the tenant's door; or leaving a copy with an adult who apparently resides with the tenant.

I find that the landlord did not prove service in a manner that is considered necessary as per sections 71(2) (a) and 88 of the *Act*, and according to Residential Tenancy Policy Guideline # 39.

The landlord must reissue the 10 Day Notice and serve it in one of the ways prescribed by section 88 of the *Act*, or according to Residential Tenancy Policy Guideline #39, if the landlord wants to apply through the Direct Request process.

As the landlord was unsuccessful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

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

The 10 Day Notice 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.

I dismiss the landlord's 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 26, 2017

Residential Tenancy Branch