



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 two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on November 9, 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 will be deemed served with the Direct Request Proceeding documents on November 14, 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*?

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 and the tenants on August 8, 2017, indicating a monthly rent of \$1,575.00, due on the first day of each month for a tenancy commencing on September 1, 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 2, 2017, with a stated effective vacancy date of November 12, 2017, for \$1,575.00 in unpaid rent. 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;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the Notice was placed under to the tenants' door at 12:53 pm on November 2, 2017;
- A copy of two text messages sent from the landlord to each of the tenants containing a copy of the 10 Day Notice; and
- A copy of a hand written worksheet showing the rent owing and paid during the relevant portion of this tenancy.

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 material does not lend itself to ambiguity or give rise to issues that may need 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.

In this type of matter, the landlord must prove that they served the tenants with the 10 Day Notice in accordance with section 88 of the *Act*.

Section 88 of the *Act* allows for service by either sending the 10 Day Notice to the tenant by 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.

In the special details section of the Proof of Service Notice to End Tenancy, the landlord has indicated that they placed the 10 Day Notice under the door of the rental unit. The landlord has also provided copies of text messages sent from the landlord to each of the tenants containing a copy of the 10 Day Notice.

I find that sending a 10 Day Notice by text message or placing it under the door of the rental unit are not methods permitted by section 88 of the *Act*.

I also note that the landlord submitted a version of the 10 Day Notice which is out of date. The 10 Day Notice provided by the landlord contains old information and refers to a website address for the Residential Tenancy Branch that is no longer in use.

For the reasons listed above, 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 November 2, 2017, without leave to reapply.

The 10 Day Notice of November 2, 2017, is cancelled and of no force or effect.

For the same reason listed above, I dismiss the landlord's application for a Monetary Order with leave to reapply.

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.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of November 2, 2017 is dismissed, without leave to reapply.

The 10 Day Notice of November 2, 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: November 10, 2017

Residential Tenancy Branch