



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

The landlord submitted one signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 11, 2017, the landlord sent Tenant R.S. the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided one copy of a Canada Post Customer Receipt containing a Tracking Number to confirm this mailing. Based on the written submission of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that Tenant R.S. will be deemed to have been served with the Direct Request Proceeding documents on November 16, 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 Tenant J.K. on September 07, 2017, and signed but not dated by Tenant R.S.,

indicating a monthly rent of \$400.00, due on the first day of each month for a tenancy commencing on September 01, 2017;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 02, 2017 for \$800.00 in unpaid rent (the 10 Day Notice). The 10 Day Notice provides 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 on the stated effective vacancy date of November 12, 2017;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 5:05 p.m. on November 02, 2017; and
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on November 05, 2017, three days after its posting.

Section 46 (4) of the *Act* states that within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice.

In this case, I find that the fifth day for the tenants to have either paid the rent or disputed the 10 Day Notice was November 10, 2017. I further find that the landlord applied for dispute resolution on November 10, 2017, the last day that the tenants had to dispute the 10 Day Notice.

The earliest date that the landlord could have applied for dispute resolution is November 11, 2017, meaning that the landlord made his application for dispute resolution one day too early.

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, with leave to reapply.

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

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.

Of note, the landlord had only submitted one signed Proof of Service of the Notice of Direct Request proceeding and one registered mail receipt in regard to Tenant R.S. Accordingly, had this matter proceeded, I would have only been able to consider the application against Tenant R.S.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice is dismissed, with leave to reapply.

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 *Act*.

Dated: November 15, 2017

Residential Tenancy Branch