



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 provided a copy of a Canada Post Customer Receipt containing a Tracking Number to confirm a package was sent to the tenant by registered mail.

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 tenant on July 1, 2017, indicating a monthly rent of \$2,300.00, due on the first day of each month for a tenancy commencing on July 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated September 7, 2017 for \$2,300.00 in unpaid rent (the 10 Day Notice for September 2017). The

10 Day Notice for September 2017 lists a stated effective vacancy date of September 20, 2017;

- A copy of a Proof of Service Notice to End Tenancy form for the 10 Day Notice for September 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated October 20, 2017 for \$4,600.00 in unpaid rent and \$255.00 in unpaid utilities (the 10 Day Notice for October 2017). The 10 Day Notice for October 2017 provides 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;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice for October 2017 was posted to the tenant's door at 4:30 pm on October 20, 2017; and
- A Monetary Order 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 evidentiary material does not lend itself to ambiguity or give rise to issues that may need further 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.

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 there is no effective date (the day when the tenant must move out of or vacate the site) on the 10 Day Notice for October 2017. I find that this omission invalidates the 10 Day Notice for October 2017 as the landlord has not complied with the provisions of section 52 of the *Act*. It is possible to amend an incorrect date on a 10 Day Notice, but the *Act* does not allow an adjudicator to input a date where none is written in.

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 October 20, 2017, without leave to reapply.

The 10 Day Notice of October 20, 2017, is cancelled and of no force or effect.

With regards to the 10 Day Notice for September 2017, the landlord must prove that they served the tenant with the 10 Day Notice in a manner that is considered necessary as per Sections 71(2) (a) and 88 of the *Act*.

On the first page of the Proof of Service Notice to End Tenancy form, the landlord has indicated they attached the 10 Day Notice for September 2017 to the door of the rental unit. On the second page of the Proof of Service Notice to End Tenancy, the witness statements indicates that they observed the landlord placing the 10 Day Notice for September 2017 in the tenant's mailbox or mail slot. I find that this discrepancy prevents me from confirming service of the 10 Day Notice for September 2017 within the purview of the Direct Request process.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act*.

The landlord has not submitted a copy of the Proof of Service of the Notice of Direct Request Proceeding to confirm service of the Notice of Direct Request Proceeding documents to the tenant. Although the landlord did provide a copy of a Canada Post Customer Receipt, I find that the documentation submitted by the landlord does not indicate what documents were sent to the tenant by registered mail.

As I am not able to confirm service of the Notice of Direct Request Proceeding or the 10 Day Notice for September 2017 to the tenant, which is a requirement of the Direct

Request Process, I dismiss the landlord's application for an Order of Possession on the basis of the 10 Day Notice of September 7, 2017 with leave to reapply.

For these same reasons, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the landlord was not successful 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 of October 20, 2017, is dismissed, without leave to reapply.

The 10 Day Notice of October 20, 2017, is cancelled and of no force or effect.

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of September 7, 2017, is dismissed, with leave to reapply.

The landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

The landlord's application to recover the filing fee paid for this application is dismissed 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: November 20, 2017

Residential Tenancy Branch