



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 Notice of Direct Request Proceeding which declares that on November 20, 2017, the landlord personally served the tenants the Notices of Direct Request Proceeding. The landlord had a witness sign the respective Proofs of Service of the Notice of Direct Request Proceeding for each tenant to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on November 20, 2017, the day it was personally served to them.

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, who is not the applicant, and the tenants on October 22, 2016, indicating a monthly rent of \$1,000.00, due on the first day of each month for a tenancy commencing on November 01, 2016;

- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,000.00 to the current monthly rent amount of \$1,035.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 02, 2017 for \$1,035.00 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 personally handed to Tenant K.T. at 5:30 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

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.

I find the 10 Day Notice indicates an incorrect address for the rental unit, which effectively gives notice to the tenants to move out of an address that is not the correct address of the rental unit as established in the tenancy agreement. I find this also sufficiently invalidates the 10 Day Notice.

I further find that the landlord's name on the Application for Dispute Resolution does not match the landlord's name on the Residential Tenancy Agreement. There is no documentation submitted referring to the transfer of responsibilities from the landlord named on the residential tenancy agreement to the landlord applying for dispute resolution, or that the landlord named on the application has legal entitlement to the rental unit.

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 November 02, 2017, without leave to reapply.

The 10 Day Notice of November 02, 2017 is cancelled and of no force or effect.

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

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of November 02, 2017, is dismissed, without leave to reapply.

The 10 Day Notice of November 02, 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.

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 21, 2017

Residential Tenancy Branch