Dispute Resolution Services

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

The landlords submitted four signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on November 27, 2017, the landlords sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on December 2, 2017, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A partial copy of a residential tenancy agreement, indicating a monthly rent of $2,200.00, due on the first day of each month for a tenancy commencing on November 1, 2016;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent for $1,160.10 in unpaid utilities (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;

- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was placed in the tenant's mailbox or mail slot at 10:00 am on October 21, 2017;

- A copy of a utility bill from the District of Coldstream for the rental unit for the billing period of July 1, 2017 to September 30, 2017 for $1,171.61;

- A copy of a demand e-mail from the landlord to the tenants, dated August 1, 2017, requesting payment of utilities in the amount of $759.41; and

- A Monetary Order Worksheet showing the utilities 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 59 of the *Act* establishes that an Application for Dispute Resolution must "include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings."

I find that the landlords have not submitted a complete tenancy agreement as the bottom of the first page has been cut off and there was no signature page provided. I

further find that I am not able to consider the landlords' Application for Dispute Resolution without this complete document which forms a part of the Application.

In this type of matter the landlords must prove that they served the tenants with the demand letter and a copy of the utility bill in accordance with section 88 of the *Act.* E-mail is not a recognized method of service under the *Act.*

Finally, 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 or dated by the landlord. I also find that there is no effective date indicated on the 10 Day Notice. I find that these omissions invalidate the 10 Day Notice as the landlords have not complied with the provisions of section 52 of the *Act.*

Therefore, I dismiss the landlords' application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice served on October 21, 2017, without leave to reapply.

The 10 Day Notice served on October 21, 2017 is cancelled and of no force or effect.

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

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the $100.00 filing fee paid for this application.

Conclusion

The landlords' application for an Order of Possession on the basis of the 10 Day Notice served on October 21, 2017, is dismissed, without leave to reapply.

The 10 Day Notice served on October 21, 2017, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlords' application for a Monetary Order for unpaid utilities, with leave to reapply.

I dismiss the landlords' application to recover the filing fee paid for this application 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: December 04, 2017

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Residential Tenancy Branch