



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 declare that on January 15, 2018, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided copies 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 each of the tenants will be deemed to have been served with the Direct Request Proceeding documents on January 20, 2018, 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, who is not the applicant, and the tenants on November 01, 2017, indicating a monthly rent of \$800.00, due on the first day of each month for a tenancy commencing on November 01, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 01, 2018 for \$800.00 in unpaid rent and \$100 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 on the stated effective vacancy date of January 11, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally handed to Tenant C.A. at 7:00 (a.m. or p.m. not indicated) on January 01, 2018; and
- A Direct Request 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 section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on January 01, 2018, the day it was personally handed to Tenant C.A.

Section 46 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day **after** the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find that the tenancy agreement indicates that the monthly rent is due on the first of every month. I further find that the landlord has issued the 10 Day Notice on January 01, 2018, the same day rent is due, which is not in accordance with section 46 of the *Act*.

I find that the landlord has not complied with the provisions of section 46 of the *Act* in regards to the 10 Day Notice issued to the tenants.

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 January 01, 2018, without leave to reapply. The 10 Day Notice of January 01, 2018 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, I dismiss the landlord's application for a Monetary Order for unpaid rent and utilities, 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's name on the residential tenancy agreement does not match the landlord's name on the Application for Dispute Resolution, the 10 Day Notice, or any other documentation submitted with the Application for Dispute Resolution. I further note that there is also no documentation referring to the transfer of responsibilities from the landlord named on the residential tenancy agreement to the landlord applying for dispute resolution. Accordingly, this matter would not have been suitable for the direct request process.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of January 01, 2018 is dismissed, without leave to reapply.

The 10 Day Notice of January 01, 2018 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 for unpaid rent and utilities, with leave to reapply.

I dismiss the landlord's application to recover the \$100.00 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: January 16, 2018

Residential Tenancy Branch