



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 a Proof of Service Notice of Direct Request Proceeding which declares that on March 16, 2018, the landlord served the tenant a Notice of Direct Request Proceeding by hand delivering a copy to the tenant.

Issues 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:

- (1) a copy of a residential tenancy agreement signed by the landlord and the tenant on November 7, 2017, indicating a monthly rent of \$1,850.00, due on the first day of the month for a tenancy commencing November 1, 2017;
- (2) a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated March 1, 2018, for \$1,850.00 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent or file

an Application for Dispute Resolution, or, that the tenancy would end on a stated effective vacancy date of March 13, 2018;

- (3) a copy of a witnessed Proof of Service of the 10 Day Notice which indicates that a copy of the 10 Day Notice was left with the tenant at 12:00 PM on March 1, 2018; and
- (4) a Direct Request Worksheet showing the rent owing during the relevant portion of the tenancy.

Analysis

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenant to participate, there is a much higher burden placed on landlord in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

Under section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day *after* the day it is due. I find that the tenancy agreement indicates that the monthly rent is due on the first of every month. The landlord served the tenant with the 10 Day Notice on the day that rent was due, which is not in accordance with 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 tenant.

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 March 1, 2018, without leave to reapply. The 10 Day Notice of March 1, 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 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 March 1, 2018 is dismissed, without leave to reapply.

The 10 Day Notice of March 1, 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 with leave to reapply.

I dismiss the landlord's 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: March 28, 2018

Residential Tenancy Branch