



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR

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 utilities.

The landlord submitted two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on May 14, 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 May 19, 2018, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid utilities pursuant to sections 46 and 55 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 February 02, 2018, indicating a monthly rent of \$2,400.00, due on the first day of each month for a tenancy commencing on February 02, 2018. The tenant agreement indicates that the tenants are responsible for 50% of electricity and gas utility charges;
- A copy of a demand letter from the landlord to the tenant, dated March 29, 2018, requesting payment of utilities in the amount of \$133.81;

- Two copies of gas utility bills, one dated February 27, 2018, in the amount of \$154.39 and one dated March 26, 2018, in the amount of \$113.24;
- A copy of a Proof of Service Notice to End Tenancy and Written Demand for Utilities form which indicates that the demand letter was sent by registered mail to the rental unit on March 29, 2018. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice) dated May 03, 2018, for \$133.81 in unpaid utilities. The 10 Day Notice provides that the tenant had five days from the date of service to pay the utilities in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of May 14, 2018;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent by registered mail to the rental unit on May 03, 2018. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing; and
- A Direct Request Worksheet showing the utilities owing and paid during the relevant portion of this tenancy.

Analysis

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them.

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the written demand letter for utilities on April 03, 2018, five days after its mailing. I find that the tenants had until the end of day on May 03, 2018, to pay the utilities.

I further find that the 10 Day Notice was issued on May 03, 2018, the same day that the tenants had to pay the utilities, and that the landlord did not wait for the full 30 days before issuing the 10 Day Notice. For this reason I find the landlord did not comply with the provisions of section 46 of the *Act*, in regards to the 10 Day Notice issued to the tenants.

As I find that the date of the demand letter is less than 30 days from the time that the 10 Day Notice was issued to the tenants and that not enough time has passed to allow the landlord to treat the unpaid utilities as unpaid rent in accordance with section 46 of the *Act*, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice dated May 03, 2018, without leave to reapply.

The 10 Day Notice dated May 03, 2018, is cancelled and of no force or effect.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice dated May 03, 2018, is dismissed without leave to reapply.

The 10 Day Notice dated May 03, 2018, is cancelled and of no force or effect.

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

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: May 18, 2018

Residential Tenancy Branch