



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-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, unpaid utilities and a Monetary Order.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceedings which declares that on June 15, 2018, the landlord personally served the tenants the Notices of Direct Request Proceeding. The landlord had a witness sign the respective Proof of Service of the Notice of Direct Request Proceedings for each tenant to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89, I find that the tenants have been duly served with the Direct Request Proceeding documents on June 15, 2018, 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 and unpaid utilities pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and unpaid utilities 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 and Tenant A.L. on February 04, 2017, indicating a monthly rent of \$1,900.00, for a tenancy commencing on March 01, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 04, 2018, for \$1,700.00 in unpaid rent and \$200.00 in unpaid utilities. 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 March 17, 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 the tenant on June 11, 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 June 11, 2018.

Section 46 (4) of the *Act* states that within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice.

I find that the fifth day for the tenant to have either paid the rent or disputed the notice was June 16, 2018. As the last day to dispute the 10 Day Notice was on the weekend, I further find that the last date that the tenant could have applied for dispute resolution is June 18, 2018, the next business day after the weekend.

I find that the landlord applied for dispute resolution on June 12, 2018, a date that is earlier than the last day that the tenant had to dispute the 10 Day Notice and that the landlord made their application for dispute resolution too early.

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 dated June 04, 2018, with leave to reapply.

For the same reasons identified above, I dismiss the landlord's application for a Monetary Order for unpaid rent and for unpaid utilities, 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.

I note that as there is no date on the tenancy agreement for when the monthly rent is due, which is a requirement of the direct request process for rent owed in the same month that the 10 Day Notice is issued.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice dated June 04, 2018 is dismissed, with leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid rent and unpaid utilities, 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: June 18, 2018

Residential Tenancy Branch