



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-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.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on August 16, 2018, the landlord served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided four copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on August 21, 2018, the fifth day after their registered mailing.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question;
- A copy of an undated 10 Day Notice to End Tenancy for Unpaid Rent (the Notice), which the landlord contends was served to the tenants on August 03, 2018;

- A copy of the Proof of Service of the Notice form on which the landlord contends that the 10 Day Notice to End Tenancy for Unpaid Rent was served to the tenants by way of posting it to the door of the rental unit on August 03, 2018.

The Notice restates section 46(4) of the Act which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

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 for the tenants to participate, there is a much higher burden placed on landlords 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.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. 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 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 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 provided by the landlord and find that the Notice to End Tenancy, which the landlord contends was served to the tenants on August 03, 2018, does not adhere to the provisions of section 52 of the *Act*. The Notice

is not dated, as required under section 52(a) of the Act, thereby making the Notice incomplete. I find that this omission invalidates the 10 Day Notice as the landlord has not dated the Notice served to the tenants, in accordance with the provisions of section 52 of the *Act*.

Therefore, I find that the 10 Day Notice to End Tenancy for Unpaid Rent included as part of this application is not in compliance with the provisions of section 52 of the *Act* and is set aside and is of no force and effect.

I further find that the Notice to End Tenancy, included as part of this application, does not adhere to the provisions of section 52 of the *Act*, as it does not include the effective date (the day when the tenants must move out of or vacate the site) of the Notice, therefore making the Notice incomplete. I find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*. It is possible to amend an incorrect date on the 10 Day Notice, but the *Act* does not allow an adjudicator to input a date where none is written.

In a participatory hearing it may be possible to amend certain deficiencies with respect to the Notice or to seek clarification from the parties, however, in the limited scope of the Direct Request process, the *Act* does not allow an adjudicator to input an effective date of the notice where none is provided on the Notice. Therefore, I find that the Notice to End Tenancy is not in compliance with the provisions of section 52 of the *Act* and is set aside and is of no force and effect.

As the landlord's application for an Order of Possession arises from a Notice to End Tenancy that has been set aside, I dismiss the landlord's application for an Order of Possession, based on the Notice to End Tenancy, which the landlord contends was served to the tenants on August 03, 2018, without 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.

If the landlord determines that unpaid rent is an outstanding concern with respect to the tenancy, it remains open to the landlord to seek remedy by issuing a Notice to End Tenancy in accordance with the criteria set out in sections 46 and 52 of *Act*, if the landlord so wishes.

Conclusion

I dismiss the landlord's application for an Order of Possession, based on the 10 Day Notice to End Tenancy for Unpaid Rent, which the landlord contends was served to the tenants on August 03, 2018, without leave to reapply.

The 10 Day Notice to End Tenancy for Unpaid Rent included as part of this application, which the landlord contends was served to the tenants on August 03, 2018, is cancelled and is of no force or effect.

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: August 20, 2018

Residential Tenancy Branch