



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-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 rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 13, 2018, the landlord posted the Notice of Direct Request Proceeding to the door of the rental unit. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the tenant will be deemed to have been served with the Direct Request Proceeding documents on September 16, 2018, the third day after their posting.

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*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by a landlord who is not the applicant on January 31, 2013 and the tenant on January 30, 2013,

indicating a monthly rent of \$1,035.00, due on the first day of each month for a tenancy commencing on February 15, 2013;

- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,060.00 to the monthly rent amount of \$1,102.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 30, 2018, for \$1,102.00 in unpaid rent. The 10 Day Notice provides that the tenant 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 August 9, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 9:00 am on August 30, 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 sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on September 2, 2018, three days after its posting.

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 September 7, 2018. I further find that the earliest date that the landlord could have applied for dispute resolution was September 8, 2018.

I find that the landlord applied for dispute resolution on September 6, 2018, before 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 August 30, 2018, with leave to reapply.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice dated August 30, 2018 is dismissed, with 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: September 13, 2018

Residential Tenancy Branch