



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPRM-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 and a Monetary Order.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on November 8, 2018, the landlord served each of the tenants with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service forms establish that the service was witnessed by "CD" and a signature for "CD" is included on the forms. The personal service was confirmed as each tenant acknowledged receipt of the Notice of Direct Request Proceeding documents by providing their respective signatures on the Proof of Service forms.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on November 8, 2018.

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:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on July 16, 2018, indicating a monthly rent of \$1,700.00, due on the first day of each month for a tenancy commencing on August 1, 2018;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord indicates a monetary claim in the amount of \$2,700.00 for outstanding rent, comprised of the balance of unpaid rent due for October 2018 and November 2018;
- A copies of rent receipts for the duration of the tenancy which demonstrate that, on October 24, 2018, the tenants provided a partial payment of October rent in the amount of \$700.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") dated November 2, 2018, which the landlord states was served to the tenants on November 2, 2018, for \$2,700.00 in unpaid rent due on November 1, 2018, with a stated effective vacancy date of November 12, 2018; and
- A copy of the Proof of Service of the Notice form asserting that the landlord served the Notice to the tenant "JG" by way of personal service via hand-delivery on November 2, 2018. The Proof of Service form indicates that the service was witnessed by "SL" and a signature for "SL" is included on the form.

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.

Analysis

I have reviewed all documentary evidence and find that in accordance with section 88 of the *Act* the tenants were duly served with the Notice on November 2, 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 tenants to have either paid the rent or disputed the notice was November 7, 2018. I further find that the earliest date that the landlord could have applied for dispute resolution was November 8, 2018.

I find that the landlord applied for dispute resolution on November 7, 2018, the last day that the tenants had to dispute the 10 Day Notice and that the landlord made their application for dispute resolution one day 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 November 2, 2018, with leave to reapply.

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

I dismiss the landlord's application for an Order of Possession and a Monetary Order for unpaid rent 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: November 14, 2018

Residential Tenancy Branch