



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM – DR, FFL

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act (Act)* and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 26, 2018 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the written submissions of the landlord, I find that the tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent and to recover the filing fee for the cost of this Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the tenant and another party who is not named as the landlord on this application on September 5, 2015 for a month to month tenancy beginning on September 5, 2015 for the monthly rent of \$950.00 due on the 1st of each month and a security deposit of \$450.00 and a pet damage deposit of \$450.00 were paid;
- A copy of a Notice of Rent Increase issued by a different landlord than that named in this application on June 7, 2017 increasing the rent from \$977.55 to

\$1,013.71 after the previous rent increase that was effective October 1, 2016. This increase was to be effective October 1, 2017; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued by a landlord with a name that is not the same as the landlord named in the tenancy agreement and rent increase or the landlord named on this application on November 6, 2018 with an effective vacancy date of November 16, 2018 due to \$4,669.74 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for several months and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door and mailing it by registered mail on November 6, 2018 at 11:00.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

Analysis

Direct Request proceedings are conducted when a landlord issues a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the tenant(s) has not filed an Application for Dispute Resolution seeking to cancel the Notice within 5 days of receiving the Notice. The proceeding is conducted *ex parte* and based solely on the paperwork provided by the applicant landlord.

Because the hearing is conducted without the benefit of having a participatory hearing in which I might question either of the parties if something is unclear in the paperwork, all documents submitted must be complete and clear.

As the landlord has provided no indication as to why there was a different party named as the landlord on this Application than what is on the Tenancy Agreement and what is on the Notice to End Tenancy for Unpaid Rent, I find I cannot proceed without the benefit of additional documentary evidence or oral testimony. In addition, the landlord has only provided one Notice of Rent Increase, as such, I am unable to determine whether or not the amount claimed as rent is correct without questions to the parties.

As a result, I find that this Application is not suitable to be adjudicated through the Direct Request process. However, I also find that it is not clear if the landlord has the evidence in documentary form that would allow a Direct Request to proceed or if the only evidence they have in regard to these issues would be provided as oral testimony.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety with leave to reapply. If the landlord has sufficient documentary evidence they may choose to apply through the Direct Request process and if not they may apply for a participatory hearing.

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: December 03, 2018

Residential Tenancy Branch