



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 December 1, 2018 at 2:18 p.m. the landlord served the tenant with the Notice of Direct Request Proceeding personally and that this service was witnessed by a third party.

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*.

I note the Application for Dispute Resolution names to people as landlord, however the tenancy agreement only lists the female applicant as the landlord. As such, I amend the landlord's Application to exclude the name of the applicant who was not defined as a landlord on the tenancy agreement.

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 parties on August 31, 2018 for a one-year fixed term tenancy beginning on September 1, 2018 for the monthly rent of \$1,400.00 due on the 1st of each month and a security deposit of \$700.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on November 21, 2018 with an effective vacancy date of December 1, 2018 due to \$1,400.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the November 2018 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by sliding it under the door of the rental unit on November 21, 2018 at 7:25 p.m. and that this service was witnessed by a third party.

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

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46(5) says that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Section 88 of the *Act* allows for documents, other than those referred to in section 89, that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator.

Residential Tenancy Policy Guideline 12 states if the person is attaching the document to a door or other conspicuous place they should make sure that the door or conspicuous place belongs to the person's residence, and that the document will be readily seen by the person entering or leaving the residence. The Guideline goes on to say that a conspicuous place is one that is clearly visible and likely to attract notice or attention. Placing a copy of the document under the door is not recognized by the Legislation.

From the landlord's submissions the Notice to End Tenancy was served by sliding it under the rental unit door. As such, I find the landlord has failed to serve the Notice to End Tenancy in a manner that is consistent with the *Act* and Policy Guideline. Therefore, I dismiss the portion of the landlord's Application for an order of possession to end the tenancy, without leave to reapply.

However, I am satisfied, based on the landlord's submitted documents, that the tenancy has failed to pay rent for the month of November in the amount of \$1,400.00 and the landlord is entitled to a monetary order for the amount.

Conclusion

As noted above, the portion of the landlord's Application seeking an order of possession is dismissed.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,450.00** comprised of rent owed in the amount of \$1,400.00 and \$50.00 of the \$100.00 filing fee as the landlord was only partially successful in her claim.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 07, 2018

Residential Tenancy Branch