



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-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 and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 18, 2019, the landlord served the tenant the Notice of Direct Request Proceeding by handing the documents to Person C.H. The landlord had Person C.H. and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submissions of the landlord and in accordance with section 89(2) of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on February 18, 2019, the day they were handed to an adult who resides with the tenant.

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*?

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 tenant on October 30, 2018, indicating a monthly rent of \$2,250.00, due on the first day of each month for a tenancy commencing on November 1, 2018;
- A copy of a utility bill from Fortis for the rental unit dated January 15, 2019 for \$267.68;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 3, 2019, for \$6,300.00 in unpaid rent and \$268.00 in unpaid utilities. 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 February 13, 2019;
- 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 6:00 (a.m. or p.m. not indicated) on February 3, 2019; 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 February 6, 2019, 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 February 11, 2019. I further find that the earliest date that the landlord could have applied for dispute resolution was February 12, 2019.

I find that the landlord applied for dispute resolution on February 11, 2019, 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 February 3, 2019, with leave to reapply.

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

The landlord's application for an Order of Possession on the basis of the 10 Day Notice dated February 3, 2019 is dismissed, with leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid rent and utilities 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: February 20, 2019

Residential Tenancy Branch