



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 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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 11, 2019, the landlords sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenant will be deemed to have been served with the Direct Request Proceeding documents on April 16, 2019, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on March 19, 2019, indicating a monthly rent of \$1,500.00, due on the first day of each month for a tenancy commencing on April 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 3, 2019, for \$1,500.00 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 April 13, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenant at 6:55 pm on April 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 section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on April 3, 2019.

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 April 8, 2019. I further find that the earliest date that the landlords could have applied for dispute resolution was April 9, 2019.

I find that the landlords applied for dispute resolution on April 8, 2019, the last day that the tenant had to dispute the 10 Day Notice and that the landlords made their application for dispute resolution too early.

Therefore, I dismiss the landlords' application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice dated April 3, 2019, with leave to reapply.

For the same reasons identified above, I dismiss the landlords' application for a Monetary Order for unpaid rent, with leave to reapply.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

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

I dismiss the landlords' application for a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlords' 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: April 12, 2019

Residential Tenancy Branch