



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 26, 2019, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on March 31, 2019, the fifth day after their registered mailing.

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*?

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 January 7, 2019, indicating a monthly rent of \$425.00, due on the first day of each month for a tenancy commencing on January 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the February 10 Day Notice) dated February 2, 2019, for \$425.00 in unpaid rent. The February 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 11, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the March 10 Day Notice) dated March 2, 2019, for \$425.00 in unpaid rent. The March 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 March 11, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the March 10 Day Notice was placed under to the tenant's door at 11:00 am on March 2, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in accordance with section 88 of the *Act*.

Section 88 of the *Act* allows for service by either sending the 10 Day Notice to the tenant by mail, by leaving a copy with the tenant, by leaving a copy in the tenant's mailbox or mail slot, attaching a copy to the tenant's door or by leaving a copy with an adult who apparently resides with the tenant.

In the special details section of the Proof of Service Notice to End Tenancy, the landlord has indicated that they placed the March 10 Day Notice under the door of the rental unit which is not a method of service as indicated above.

For this reason, I find that the March 10 Day Notice has not been served in accordance with section 88 of the *Act*.

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 March 2, 2019, without leave to reapply.

The 10 Day Notice dated March 2, 2019, is cancelled and of no force or effect.

I also find that the landlord has not provided a Proof of Service Notice to End Tenancy form or any other documentation to establish service of the February 10 Day Notice to the tenant.

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 2, 2019, with leave to reapply.

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

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice dated March 2, 2019, is dismissed, without leave to reapply.

The 10 Day Notice dated March 2, 2019, is cancelled and of no force or effect.

The landlord's application for an Order of Possession on the basis of the 10 Day Notice dated February 2, 2019, is dismissed, with leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid rent with 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 02, 2019

Residential Tenancy Branch