



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

The landlord submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on May 10, 2019, the landlord personally served each of the tenants the Notice of Direct Request Proceeding. The landlord had a witness sign the Proofs of Service of the Notices of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on May 10, 2019.

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 tenants on March 23, 2019, indicating a monthly rent of \$982.80, 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 February 28, 2019, for \$8,414.80 in unpaid rent. The 10 Day Notice provides

that the tenants 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 10, 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 tenants at 7:00 (a.m. or p.m. not indicated) on February 28, 2019; and
- A Direct Request Worksheet.

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.

I have reviewed all documentary evidence and I find that the landlord issued a 10 Day Notice on February 28, 2019 with an effective date of March 10, 2019.

I also find that the landlord and the tenants entered into a new tenancy agreement on March 23, 2019 with a start date of April 1, 2019.

Policy Guideline #11 on the Amendment and Withdrawal of Notices states that:

“In order to be effective, a notice ending a tenancy must be clear, unambiguous and unconditional.”

As the landlord entered into a new tenancy with the tenants after the effective date of the 10 Day Notice, I find that the landlord’s intention to proceed with ending the tenancy was not clear.

For this reason, the landlord’s application to end this tenancy on the basis of the 10 Day Notice dated February 28, 2019 is dismissed without leave to reapply.

The 10 Day Notice dated February 28, 2019 is cancelled and of no force or effect.

For the same reason listed above, the landlord’s application for a Monetary Order for unpaid rent is dismissed 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

I dismiss the landlord's application for an Order of Possession on the basis of the 10 Day Notice dated February 28, 2019 without leave to reapply.

The 10 Day Notice dated February 28, 2019 is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlord's application for a Monetary Order for unpaid rent 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: May 22, 2019

Residential Tenancy Branch