



Dispute Resolution Services

Page: 1

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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 09, 2019, the landlord served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form also establishes that the service was witnessed by “KB” and a signature for “KB” is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on May 09, 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

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

On the landlord's Application for Dispute Resolution by Direct Request, the landlord has stated that the tenant did not pay the monthly rent owed for the month of May 2019. The landlord seeks an Order of Possession based on unpaid rent, and a Monetary Order, based on the unpaid rent owed for the month of May 2019.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on May 17, 2018, indicating a monthly rent of \$900.00, due on the 18th day of each month for a tenancy commencing on May 01, 2018;
- A Direct Request Worksheet showing the rent owing during the relevant portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$900.00 for outstanding rent, comprised of the balance of unpaid rent due by May 01, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 02, 2019, which the landlord states was served to the tenant on May 02, 2019, for \$900.00 in unpaid rent due on May 02, 2019, with a stated effective vacancy date of May 11, 2019; and
- A copy of the Proof of Service of the Notice form asserting that the landlord served the Notice to the tenant by way of personal service via hand-delivery on May 02, 2019. The Proof of Service form establishes that the service was witnessed by "KB" and a signature for "KB" is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the Act and Policy Guidelines. 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 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.

The tenancy agreement provided by the landlord demonstrates that the monthly rent is due on the first day of each month. Section 46 of the *Act* provides that the landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant after the day that rent is due. Section 46 provides, in part, the following:

Landlord's notice: non-payment of rent

46 (1) 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.

The application before me includes a tenancy agreement which demonstrates that the monthly rent is due on the 18th day of each month. Therefore, in accordance with section 46 of the *Act*, if the rent remains unpaid after the day on which it is due, the earliest opportunity for the landlord to issue a 10 Day Notice to End Tenancy for Unpaid Rent would be the following day. In the matter before me, the landlord's earliest opportunity to issue the Notice to the tenant with respect to unpaid rent owed for May 2019 would have been on the 19th day of May 2019.

According to the landlord's Application for Dispute Resolution by Direct Request and the Direct Request Worksheet provided by the landlord, the landlord indicates that there is unpaid rent owed by May 01, 2018, for the month of May 2019. As the landlord issued the Notice on May 02, 2019, 16 days before the monthly rent for May 2019 is due, I find that the landlord has issued the Notice to End Tenancy to the tenant earlier than permitted under section 46 of the *Act*.

Therefore, I find that the Notice to End Tenancy, dated May 02, 2019, is not in compliance with the provisions of section 46 of the *Act* and is set aside and is of no force and effect.

As the landlord's application for an Order of Possession arises from a Notice that has been set aside, I dismiss the landlord's application for an Order of Possession, based on the May 02, 2019 Notice, without leave to reapply.

Based on the foregoing, I dismiss the landlord's application for a monetary Order 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.

If the landlord determines that unpaid rent remains an outstanding concern with respect to the tenancy, it remains open to the landlord to seek remedy by issuing a Notice to End Tenancy in accordance with the criteria set out in sections 46 and 52 of Act, if the landlord so wishes.

Conclusion

I dismiss the landlord's application for an Order of Possession, based on the May 02, 2019 Notice, without leave to reapply.

The 10 Day Notice of May 02, 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 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 10, 2019

Residential Tenancy Branch