



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* ("Act"), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an Order of Possession for unpaid rent, pursuant to section 55.

The tenant did not attend this hearing, which lasted approximately 18 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. A decision is made on the basis of the landlord's paper application only, not any participation by the tenant. An "interim decision," dated June 4, 2019, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

By way of the interim decision, the landlord was required to serve the interim decision and notice of reconvened hearing to the tenant. The landlord stated that the tenant was served with the above documents on June 5, 2019, by way of registered mail to the rental unit where the tenant is residing. The landlord provided a Canada Post receipt and tracking number with this application. The landlord confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the interim decision and notice of reconvened hearing on June 10, 2019, five days after its registered mailing.

The landlord claimed that the tenant was served with the landlord's original application for dispute resolution by direct request on May 31, 2019, by way of registered mail to the rental unit where the tenant is residing. The landlord provided a Canada Post receipt and tracking number with this application. The landlord confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's original application on June 5, 2019, five days after its registered mailing.

The landlord provided a signed, witnessed proof of service that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 24, 2019, ("10 Day Notice") in person on the same date. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlord's 10 Day Notice on April 24, 2019.

Issue to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on March 1, 2019 for a fixed term ending on December 31, 2019. Monthly rent in the amount of \$450.00 is payable on the first day of each month. No security deposit was paid by the tenant, as none was required by the landlord. A written tenancy agreement was signed by both parties but a copy was not provided for this hearing. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice, which has an effective move-out date of May 4, 2019, indicating that rent in the amount of \$750.00 was due on March 1, 2019. The landlord provided a copy of the notice. The landlord claimed that he made an error, indicating that the \$750.00 rent was due on March 1, 2019, rather than April 1, 2019. He said that he did not tell the tenant about this error.

The landlord stated that the tenant failed to pay rent of \$300.00 for March 2019, as a payment of \$150.00 was made on March 29, 2019. The landlord maintained that the tenant also failed to pay rent of \$450.00 for April 2019. He explained that he gave the tenant a deadline of April 20, 2019, to pay everything, but the tenant failed to do so. The landlord said that the tenant failed to pay rent of \$450.00 for each month from May to July 2019.

The landlord seeks an order of possession based on the 10 Day Notice. He claimed that he was not seeking a monetary order from the tenant because he thinks the tenant will not pay and he does not want to “chase” him.

Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which the landlord said was the first day of each month. Section 46 of the *Act* states that the landlord may only issue a 10 Day Notice for any day after the rent is due.

In this case, the landlord claimed that rent of \$750.00 was due on March 1, 2019. However, under the parties’ tenancy agreement, the tenancy began on March 1, 2019, and rent of \$450.00 was due on that date. Rent of \$750.00 was due on April 1, 2019, as per the landlord’s testimony, not March 1, 2019. The landlord did not correct the date or the notice when he spoke to or dealt with the tenant.

Therefore, I find that the tenant did not have notice of the proper amount of rent due. The landlord provided the incorrect amount of rent of \$750.00 due on March 1, 2019, rather than April 1, 2019. I find that the tenant did not have an opportunity to pay the rent in order to cancel the notice because the rent information supplied by the landlord was incorrect.

Accordingly, I find that the landlord is not entitled to an order of possession based on the 10 Day Notice and I dismiss his application without leave to reapply. The landlord’s 10 Day Notice, dated April 24, 2019, is cancelled and of no force or effect.

Conclusion

The landlord’s application is dismissed without leave to reapply.

The landlord’s 10 Day Notice, dated April 24, 2019, is cancelled and of no force or effect.

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: July 15, 2019