



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 July 12, 2019, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had the tenant and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission 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 July 12, 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 relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on April 6, 2018, indicating a monthly rent of \$2,600.00, due on the first day of each month for a tenancy commencing on May 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 2, 2019, for \$2,600.00 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 July 12, 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 3:00 (a.m. or p.m. not indicated) on July 2, 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 July 2, 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.

The definition of days in the Residential Tenancy Branch Rules of Procedure states that: "If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open".

I find that the fifth day for the tenant to have either paid the rent or disputed the notice was July 7, 2019, which was a Sunday. The Residential Tenancy Branch is closed on Saturdays and Sundays, meaning that the latest day on which the tenant could have disputed the 10 Day Notice was on Monday, July 8, 2019.

I further find that the landlord applied for dispute resolution on July 8, 2019, the last day that the tenant had to dispute the 10 Day Notice, and that the earliest date that the landlord could have applied for dispute resolution was July 9, 2019. The landlord made their application for dispute resolution too early.

Therefore, the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of July 2, 2019, is dismissed with leave to reapply.

For the same reasons identified in the 10 Day Notice, 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 of July 2, 2019 with leave to reapply.

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: July 12, 2019

Residential Tenancy Branch