



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 16, 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 will be deemed to have been served with the Direct Request Proceeding documents on July 21, 2019, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid utilities pursuant to sections 46 and 55 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.

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 March 4, 2017, indicating a monthly rent of \$700.00, due on the first day of each month for a tenancy commencing on July 1, 2017;

- A copy of a demand letter from the landlord to the tenant, dated July 16, 2019, requesting payment of utilities in the amount of \$3,095.04 by June 17, 2019;
- A copy of a Canada Post Customer Receipt containing a Tracking Number to confirm the demand letter was sent to the tenant on June 7, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated June 18, 2019, for \$3,095.04 in unpaid utilities. 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 3, 2019;
- A copy of a second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated June 18, 2019, for \$3,095.04 in unpaid utilities. The second 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 10, 2019;
- A copy of a Canada Post Customer Receipt containing a Tracking Number to confirm a 10 Day Notice was sent to the tenant on June 25, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, and issue a 10 Day Notice, 30 days after the tenant is given a written demand for them.

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the utility demand letter on June 12, 2019, five days after its registered mailing.

I find that the 10 Day Notices submitted by the landlord are dated June 18, 2019. The landlord submitted a Canada Post Customer Receipt to establish that a 10 Day Notice was sent to the tenant on June 25, 2019, which is less than 30 days from the time the tenant received the demand letter.

I find that not enough time has passed to allow the landlord to treat the unpaid utilities as unpaid rent.

For this reason, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notices dated June 18, 2019, without leave to reapply.

The 10 Day Notices dated June 18, 2019, are cancelled and of no force or effect.

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

The landlord's application for an Order of Possession on the basis of the 10 Day Notices dated June 18, 2019, is dismissed without leave to reapply.

The 10 Day Notices dated June 18, 2019, are 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 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 16, 2019

Residential Tenancy Branch