



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LE GERS PROPERTIES INC and
[tenant name suppressed to protect privacy]

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 September 18, 2019, the landlord sent Tenant C.K. 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 Tenant C.K. will be deemed to have been served with the Direct Request Proceeding documents on September 23, 2019, the fifth day after their registered mailing.

The landlord did not submit a copy of a Proof of Service of the Notice of Direct Request Proceeding to establish service of the Notice of Direct Request Proceeding documents to Tenant D.M.

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 tenants on April 9, 2019, indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on May 1, 2019;
- Two copies of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 6, 2019, for \$1,215.00 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 September 16, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was placed under the door of the rental unit at 9:30 am on September 6, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

In this type of matter, the landlord must prove that they served the tenants with the 10 Day Notice in accordance with section 88 of the *Act*.

Section 88 of the *Act* allows for service by either sending the 10 Day Notice to the tenant by mail, by leaving a copy with the tenant, by leaving a copy in the tenant's mailbox or mail slot, attaching a copy to the tenant's door or by leaving a copy with an adult who apparently resides with the tenant.

In the special details section of the Proof of Service Notice to End Tenancy, the landlord has indicated that they placed the 10 Day Notice under the door of the rental unit which is not a method of service as indicated above.

I find that the 10 Day Notice has not been served in accordance with section 88 of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice dated September 6, 2019, without leave to reapply.

The 10 Day Notice dated September 6, 2019, is cancelled and of no force or effect.

For the same reason listed above, I dismiss the landlord's application for a Monetary Order for unpaid rent 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.

The landlord must reissue the 10 Day Notice and serve it in one of the ways prescribed by section 88 of the *Act*, or according to Residential Tenancy Policy Guideline #39, if the landlord wants to apply through the Direct Request process.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice dated September 6, 2019, is dismissed, without leave to reapply.

The 10 Day Notice dated September 6, 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: September 19, 2019

Residential Tenancy Branch