



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR – DR OPUM – DR

Introduction

This application has been made via the Direct Request Proceeding; an ex parte process pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*.)

The landlord has applied requesting an order of possession and monetary order based on unpaid rent.

The landlord submitted a proof of service document which declares that on September 27, 2019 at 6:15 p.m. the landlord served the tenant notice of the direct request proceeding by personal delivery. The landlord submitted a proof of service documents signed by witness A.D. and landlord H.L., declaring the tenant was personally served, at the rental unit address.

Based on the written submissions of the landlord I find that the tenant has been served the proceeding documents in accordance with section 89(2)(a) of the *Act*.

I find that the tenant was served on the date of personal delivery; September 27, 2019.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on unpaid rent?

Is the landlord entitled to a monetary order based on unpaid rent?

Background and Evidence

The landlord submitted the following documents:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on July 17, 2017, indicating a monthly rent of \$2,100.00, due on the first day of each month;

- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities (the Notice) issued on September 01, 2019. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,950.00 within five (5) days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental unit by the date set out in the Notice unless the tenant filed an application for dispute resolution within five (5) days.

Analysis

The tenancy agreement supplied as evidence indicates that rent is due on the first day of each month. Therefore, I find that the tenant has until midnight on the first day of each month to pay the rent.

The Notice indicates that the tenant has failed to pay rent on the date rent was due; yet the landlord has issued the Notice on the same date rent is due each month; the first.

Therefore, pursuant to section 62(3) of the Act, as the landlord issued the Notice prematurely I find the date of issue renders the Notice null. A Notice cannot be issued prior to the payment of rent being overdue.

Conclusion

The Notice to end tenancy for unpaid rent and utilities is null.

The application requesting an order of possession is dismissed.

The claim for compensation is dismissed with 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: October 16, 2019

Residential Tenancy Branch