



Dispute Resolution Services

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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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that the landlords sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post receipt containing the Tracking Numbers to confirm these mailings took place on October 4, 2019. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on October 9, 2019, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords 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 landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by Tenant J.M. on February 24, 2019, indicating a monthly rent of \$1,200.00, for a tenancy commencing on February 20, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) for \$3,100.00 in unpaid rent. The 10 Day Notice provides that Tenant J.M. 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 28, 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 tenants at 10:00 am on September 18, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*
*(a) be signed **and dated** by the landlord or tenant giving the notice,*
(b) give the address of the rental unit,
(c) state the effective date of the notice...and
(e) when given by a landlord, be in the approved form...

I have reviewed all documentary evidence and I find that the 10 Day Notice is not dated. I further find that this omission invalidates the 10 Day Notice as the landlords have not complied with the provisions of section 52 of the *Act*.

Therefore, I dismiss the landlords' application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice served on September 18, 2019, without leave to reapply.

The 10 Day Notice served on September 18, 2019 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, the landlords' application for a Monetary Order for unpaid rent is dismissed, with leave to reapply.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlords' application for an Order of Possession on the basis of the 10 Day Notice served on September 18, 2019, is dismissed, without leave to reapply.

The 10 Day Notice served on September 18, 2019, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlords' application for a Monetary Order for unpaid rent, with leave to reapply.

I dismiss the landlords' 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: October 11, 2019

Residential Tenancy Branch