



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EDGEWATER PLACE APTS 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 October 31, 2019, the landlord personally served Tenant L.B. the Notice of Direct Request Proceeding. The landlord had Tenant L.B. 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(1) of the *Act*, I find that Tenant L.B. has been duly served with the Direct Request Proceeding documents on October 31, 2019.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 31, 2019, the landlord served Tenant R.L. the Notice of Direct Request Proceeding by handing the documents to Tenant L.B. The landlord had Tenant L.B. and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlord and in accordance with section 89(2) of the *Act*, I find that Tenant R.L. has been duly served with the Direct Request Proceeding documents on October 31, 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

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 Tenant L.B. on March 19, 2019, indicating a monthly rent of \$1,599.00, due on the first day of each month for a tenancy commencing on April 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 15, 2019, for \$1,128.00 in unpaid rent. The 10 Day Notice provides that Tenant L.B. 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 October 25, 2019;
- A copy of a photograph showing a 10 Day Notice attached to a door;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 11:57 (a.m. or p.m. not indicated) on October 15, 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 landlord has submitted two version of the 10 Day Notice: one that has been signed by the landlord and one that has not been signed. I find that photograph of the 10 Day Notice attached to the door shows a 10 Day Notice that has not not signed by the landlord.

Based on the evidence submitted, I find that the copy of the 10 Day Notice served to the tenant has not been signed by the tenant. I further find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 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 October 15, 2019, without leave to reapply.

The 10 Day Notice dated October 15, 2019 is cancelled and of no force or effect.

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

The landlord's application for an Order of Possession on the basis of the 10 Day Notice dated October 15, 2019, is dismissed, without leave to reapply.

The 10 Day Notice dated October 15, 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: November 05, 2019

Residential Tenancy Branch