



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, 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 10, 2020, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit.

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 landlord and the tenant on July 8, 2013, indicating a monthly rent of \$1,100.00, due on the first day of each month for a tenancy commencing on July 30, 2013. The tenancy agreement was renewed and initialed by the landlord and tenant in 2018, at an increased rent of \$1,140.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 31, 2020, for \$6,840.00 in unpaid rent. 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 September 10, 2020;

- 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 tenant at 9:00 am on September 1, 2020; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

Section 46 (1) of the *Act* states that a landlord may issue a 10 Day Notice if rent is unpaid on any day **after** the day it is due.

I find the tenancy agreement indicates that the monthly rent is due on the first of every month. I further find that the landlord has issued the 10 Day Notice on September 1, 2020, the same day that the monthly rent was due for September 2020.

I find that the landlord has not complied with the provisions of section 46 of the *Act* regarding the September 2020 portion of the 10 Day Notice issued to the tenant.

I also note that the 10 Day Notice include amounts owing from April 2020 to August 2020.

Policy Guideline #52 provides the following information pertaining to the *COVID-19 Related Measures Act (the C-19 Act)*:

“Affected rent means rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between March 18, 2020 and August 17, 2020”

The guideline goes on to state:

“A landlord cannot pursue an eviction for unpaid affected rent unless they have already given a valid repayment plan or there is a valid prior agreement still in effect.”

I find that the rent listed on the 10 Day Notice from April 2020 to August 2020 is considered affected rent. I also find that the landlord has not submitted a copy of a repayment plan or a valid prior agreement to demonstrate that they have the authority to issue a 10 Day Notice for the affected rent.

For this reason, I find that the landlord has not complied with the provisions of Policy Guideline #52 and the *C19 Act* regarding the portion of the 10 Day Notice related to rent from April 2020 to August 2020.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated September 1, 2020, without leave to reapply.

The 10 Day Notice dated September 1, 2020, is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, 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.

Conclusion

The landlord's application for an Order of Possession based on the 10 Day Notice dated September 1, 2020 is dismissed, without leave to reapply.

The 10 Day Notice dated September 1, 2020, 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 11, 2020

Residential Tenancy Branch