



Dispute Resolution Services

Page: 1

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 landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on September 17, 2020 the landlord served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on September 22, 2020, the fifth day after their registered mailing.

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.

On the landlord's Application for Dispute Resolution by Direct Request, the landlord seeks an Order of Possession based on unpaid rent and a Monetary Order for unpaid rent in the amount of \$1,400.00.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants, indicating a monthly rent of \$1,400.00 due on the last day of the month preceding the month for which rent is due, for a tenancy commencing on March 01, 2020;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy in question, on which the landlord establishes that there was unpaid rent owed in the amount of \$1,400.00, comprised of the balance of unpaid rent due by August 31, 2020. The landlord states that the tenants subsequently paid the full amount of outstanding rent owed in the amount of \$1,400.00 on September 11, 2020, for which the landlord issued a receipt which acknowledged that the amount of \$1,400.00 was received for use and occupancy only;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated September 01, 2020, which the landlord states was served to the tenant on September 01, 2020, for \$1,400.00 in unpaid rent due on August 31, 2020, with a stated effective vacancy date of September 11, 2020; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "PM" served the Notice to the tenants by way of personal service via hand-delivery to the tenant "JM" on September 01, 2020. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are included on the form.

The Notice restates section 46(4) of the Act which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within

five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

Analysis

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

I have reviewed all documentary evidence provided by the landlord and find that in accordance with section 88 of the *Act* the tenants were duly served with the Notice on September 01, 2020.

Section 46 of the *Act* provides, in part, the following with respect to a 10 Day Notice to End Tenancy for Unpaid Rent:

46 (4) *Within 5 days after receiving a notice under this section, the tenant may*

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Section 55(2) of the *Act* provides, in part, the following with respect to a landlord's ability to request an order of possession of a rental unit:

Order of possession for the landlord

55 (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

I find that, as the tenants were duly served with the Notice on September 01, 2020, the tenants' latest opportunity to either pay, in full, the amount listed on the Notice, or to file for dispute resolution to dispute the Notice, would have been September 06, 2020.

Therefore, in accordance with the provisions of subsection 55(2)(b) of the *Act*, the landlord's earliest opportunity to apply for an Order of Possession would have been September 07, 2020, after the five-day period granted under section 46(4) for the tenants to file an application for dispute resolution to dispute the Notice, or to pay the outstanding rent in full, had lapsed.

I find that the landlord has filed an application for an Order of Possession and a monetary Order via dispute resolution by Direct Request earlier than permitted by the *Act*, as the landlord filed an "Application for Dispute Resolution by Direct Request" on September 05, 2020, which, along with the application filing fee, was established as being received by the Residential Tenancy Branch on September 05, 2020.

I further find that the landlord has not provided any evidentiary material to demonstrate that the tenants received the Notice, dated September 01, 2020, earlier than September 01, 2020. Based on the foregoing, the landlord's application for an Order of Possession and a monetary Order based on 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

I dismiss the landlord's application for an Order of Possession with leave to reapply.

I dismiss the landlord's application for a monetary Order with leave to reapply.

I dismiss the landlord's request to recover the \$100.00 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 21, 2020

Residential Tenancy Branch