



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, 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 Notice of Direct Request Proceeding forms which declare that on November 6, 2020, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord 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 November 11, 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

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by Tenant J.C. on June 3, 2020, indicating a monthly rent of \$2,300.00, due on the first day of each month for a tenancy commencing on June 1, 2020;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 9, 2020, for \$2,300.00 in unpaid rent. The 10 Day Notice provides that the tenants 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 23, 2020;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenants by registered mail at 3:40 pm on October 13, 2020;
- A copy of a Canada Post Customer Receipt and Tracking Report to confirm the 10 Day Notice was in fact sent to the tenants on October 9, 2020; and
- A Direct Request Worksheet.

Analysis

Section 46(4)(a) of the *Act*, regarding a landlord's notice for non-payment of rent, states that "within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect."

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on October 14, 2020, five days after its registered mailing.

I find that the fifth day for the tenants to have either paid the rent or disputed the notice was October 19, 2020.

In their Application for Dispute Resolution, the landlord has indicated that the tenants sent the rent on October 16, 2020, within the five days granted by the *Act*.

The landlord also mentioned that a second copy of the 10 Day Notice was attached to the tenants' door on October 10, 2020. Although the landlord did not submit any evidence to confirm this service, I find the tenants would have been deemed served with this 10 Day Notice on October 13, 2020. Meaning the last day for the tenants to pay based on the 10 Day Notice attached to the door would have been October 18, 2020.

I find that the tenants paid the rent within the five days granted under section 46(4)(a) of the *Act* and for this reason, the 10 Day Notice has no effect.

Therefore, the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated October 9, 2020 is dismissed, without leave to reapply.

The 10 Day Notice dated October 9, 2020 is cancelled and of no force or effect.

In a Direct Request Proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant. I find the 10 Day Notice only lists amounts owing for October 2020.

For this reason, the landlord's application for a Monetary Order for unpaid rent owing for November 2020 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 based on the 10 Day Notice dated October 9, 2020, without leave to reapply.

The 10 Day Notice dated October 9, 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 owing for November 2020 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 26, 2020

Residential Tenancy Branch