



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

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on November 9, 2020, the landlords personally served Tenant F.H. the Notice of Direct Request Proceeding. The landlords had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlords and in accordance with section 89(1) of the *Act*, I find that Tenant F.H. has been duly served with the Direct Request Proceeding documents on November 9, 2020.

The landlords submitted a second signed Proof of Service Notice of Direct Request Proceeding which declares that on November 9, 2020, the landlords served Tenant A.H. the Notice of Direct Request Proceeding by handing the documents to Tenant F.H. The landlords had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlords and in accordance with section 89(2) of the *Act*, I find that Tenant A.H. has been duly served with the Direct Request Proceeding documents on November 9, 2020.

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 the landlords and the tenants on July 17, 2019, indicating a monthly rent of \$1,200.00, for a tenancy commencing on August 1, 2019;
- A copy of a Repayment Plan dated September 2, 2020 indicating the tenants would be responsible for repayment of affected rent in monthly installments of \$267.00 starting on October 15, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 16, 2020, for \$267.00 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 26, 2020;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 4:00 (a.m. or p.m. not indicated) on October 16, 2020; 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 signed by either landlord. 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 based on the 10 Day Notice dated October 16, 2020, without leave to reapply.

The 10 Day Notice dated October 16, 2020 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 based on the 10 Day Notice dated October 16, 2020, is dismissed, without leave to reapply.

The 10 Day Notice dated October 16, 2020, 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: November 30, 2020

Residential Tenancy Branch