



Dispute Resolution Services

Page: 1

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 a copy of a Canada Post Customer Receipt containing a Tracking Number to confirm a package was sent to the tenant by registered mail on November 20, 2020.

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 January 28, 2020, indicating a monthly rent of \$1,450.00, due on the first day of each month for a tenancy commencing on February 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 1, 2020, for \$1,450.00 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 November 11, 2020;

- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenant at 5:30 pm on November 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* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

*“A landlord may end a tenancy if rent is unpaid on any day **after** the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.”*

I find that 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 November 1, 2020, the same day that the monthly rent was due for November 2020, which is not in accordance with section 46 of the *Act*.

Furthermore, 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 find that there is no address from where the tenant must move on the 10 Day Notice. I find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*.

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

The 10 Day Notice of November 1, 2020 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 based on the 10 Day Notice of November 1, 2020, is dismissed without leave to reapply.

The 10 Day Notice of November 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: December 09, 2020

Residential Tenancy Branch