



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 a signed Proof of Service Notice of Direct Request Proceeding which declares that on November 20, 2020, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on November 25, 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 the landlord and the tenant on September 19, 2013, indicating a monthly rent of \$1,300.00, due on the first day of each month for a tenancy commencing on October 1, 2013;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the October 10 Day Notice) dated October 7, 2020, for \$2,600.00 in unpaid rent owing for September 2020 and October 2020. The October 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 October 17, 2020;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the October 10 Day Notice was sent to the tenant by registered mail on October 8, 2020;
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the October 10 Day Notice was sent to the tenant on October 8, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the November 10 Day Notice) dated November 4, 2020, for \$3,900.00 in unpaid rent owing for September 2020, October 2020, and November 2020. The November 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 15, 2020;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the November 10 Day Notice was sent to the tenant by registered mail;
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the November 10 Day Notice was sent to the tenant on November 5, 2020; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

Policy Guideline #11 on Amendment and Withdrawal of a Notice to End Tenancy indicates that a notice can be waived with the implied or express consent of the landlord or tenant. The guideline goes on to state that waiver can be implied through the actions or behavior of the landlord or tenant.

The landlord issued a 10 Day Notice on October 7, 2020 which included unpaid rent owing for September 2020 and October 2020. This October 10 Day Notice indicated

that if the tenant paid the rent for September 2020 and October 2020 within five days the notice would be cancelled.

However, when the landlord issued a new 10 Day Notice on November 4, 2020 which also included unpaid rent owing September 2020 and October 2020, the landlord provided the tenant a new five-day deadline to pay the rent for September 2020 and October 2020.

I find the landlord extending the deadline to pay the rent for September 2020 and October 2020 acts as an implied waiver of the October 10 Day Notice. For this reason, I find I can only consider the landlord's request based on the November 10 Day Notice.

The landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated October 7, 2020, is dismissed without leave to reapply.

In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the November 10 Day Notice on November 10, 2020, five days after its registered mailing.

Section 46 (4) of the *Act* states that, within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice.

I find that the fifth day for the tenant to have either paid the rent or disputed the November 10 Day Notice was November 15, 2020.

I further find that the landlord applied for dispute resolution on November 13, 2020, before the last day that the tenant had to dispute the November 10 Day Notice. The landlord made their application for dispute resolution too early.

Therefore, the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated November 4, 2020, is dismissed with leave to reapply.

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

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice dated October 7, 2020 without leave to reapply.

The 10 Day Notice dated October 7, 2020 is cancelled and of no force or effect.

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice dated November 4, 2020 with leave to reapply.

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 10, 2020

Residential Tenancy Branch