



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPRM-DR, OPR-DR-PP, 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 December 16, 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 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 December 21, 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.

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 February 1, 2013, indicating a monthly rent of \$1025.00 plus \$15.00 for parking due on the first day of each month for a tenancy commencing on March 1, 2013;
- Two pages of a tenant ledger for the period of July 30, 2019 through December 2, 2020 that shows the landlord was charging the tenant rent of \$1166.00 and parking of \$20.00 per month during this period of time;
- A copy of a Repayment Plan dated August 19, 2020 indicating the tenant would be responsible for repayment of affected rent in monthly installments of \$338.00 starting on October 1, 2020;
- A copy of a two-page 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) that is dated December 1, 2020 by way of the landlord's "received" stamp, indicating \$1307.00 in unpaid rent as of a date that is illegible on the copy provided to me;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was given to the tenant in person on November 25, 2020, 2020; and,
- A Direct Request Worksheet that provides for rent owing and collected.

Analysis

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 that such evidentiary material 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.

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...***

Upon review of the 10 Day Notice submitted by the landlord, I note that the date appearing below the amount of rent payable is illegible.

I also note that the 10 Day Notice appears to be issued by the landlord on December 1, 2020 based on the stamp appearing near the landlord's agent's signature; yet, the landlord provided a Proof of Service indicating the tenant was served with a 10 Day Notice on November 25, 2020 and it is not possible to serve a tenant with a document that has not yet been issued by the landlord. As such, I find this discrepancy leads me to conclude that I am unsatisfied the tenant was served with the 10 Day Notice that was submitted by the landlord with this Application for Dispute Resolution.

The 10 Day Notice provided by the landlord is an old two-page form published by the Residential Tenancy Branch in 2012 and is no longer an approved form.

In light of the above, I find I am not satisfied the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent in the approved form that was duly completed. Therefore, I decline to grant the landlord an Order of Possession based on the 10 Day Notice provided to me.

As for the landlord's monetary claim, I note the landlord's ledger indicates a monthly rent that is not the same as the rent provided in the tenancy agreement. The landlord did not provide Notices of Rent Increase to demonstrate the rent was lawfully increased since the tenancy started. Therefore, I dismiss the landlord's monetary claim with leave to reapply.

Conclusion

The landlord's application for an Order of Possession based on the 10 Day Notice provided with this Application for Dispute Resolution is dismissed. The landlord remains at liberty to serve the tenant with another 10 Day Notice that meets the form and content requirements of section 52 of the Act.

The landlord's application for a Monetary Order is dismissed with 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: January 07, 2021

Residential Tenancy Branch