



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

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.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on December 17, 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 December 22, 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*?

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 October 16, 2020, indicating a monthly rent of \$595.00, due on the first day of each month for a tenancy commencing on October 15, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 4, 2020, for \$595.00 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 December 14, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

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.

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in a manner that is considered necessary as per sections 71(2) (a) and 88 of the *Act*.

I have reviewed all documentary evidence and I find the Proof of Service Notice to End Tenancy indicates that the 10 Day Notice was attached to a door at an address that is not the rental unit established in the tenancy agreement.

I also find that, on the first page of the Proof of Service Notice to End Tenancy form, the landlord has indicated they served the 10 Day Notice on December 4, 2020. However, on the second page of the Proof of Service Notice to End Tenancy, the witness has indicated they observed the landlord serve the 10 Day Notice on December 2, 2020.

I find I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request proceeding. For this reason, the landlord's application for an Order of Possession for unpaid rent is dismissed with leave to reapply.

Conclusion

I dismiss the landlord's application for an Order of Possession for unpaid rent 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