



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 two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on December 18, 2020, the landlord personally served each of the tenants the Notice of Direct Request Proceeding. The landlord had the tenants and a witness sign the Proof of Service Notice of Direct Request Proceeding forms to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the tenants have been duly been served with the Direct Request Proceeding documents on December 18, 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

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 tenants on April 24, 2020, indicating a monthly rent of \$2,100.00, due on the first day of each month for a tenancy commencing on April 24, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 15, 2020, for \$2,150.00 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 September 15, 2020; and
- A blank Direct Request Worksheet.

Analysis

Policy Guideline #52 provides the following information pertaining to the *COVID-19 Related Measures Act (the C-19 Act)*:

“Affected rent means rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between March 18, 2020 and August 17, 2020”

The guideline goes on to state:

“A landlord cannot pursue an eviction for unpaid affected rent unless they have already given a valid repayment plan or there is a valid prior agreement still in effect.”

I find that the rent listed on the 10 Day Notice is from August 2020 and is considered affected rent. I also find that the landlord has not submitted a copy of a repayment plan or a valid prior agreement to demonstrate that they had the authority to issue a 10 Day Notice for the affected rent.

For this reason, I find that the landlord has not complied with the provisions of Policy Guideline #52 and the *C19 Act* regarding the 10 Day Notice issued to the tenant.

Therefore, I dismiss the landlord’s application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated August 15, 2020, without leave to reapply.

The 10 Day Notice dated August 15, 2020, is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, I dismiss the landlord’s application for a Monetary Order for unpaid rent 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.

I note that the landlord has indicated on their Application for Dispute Resolution that a 10 Day Notice was issued to the tenants on October 5, 2020. The landlord has also submitted a document which indicates that a 10 Day Notice was served to the tenants on September 2, 2020.

The landlord may reapply for a Direct Request Proceeding if they provide a copy of a valid 10 Day Notice and have evidence to demonstrate the more recent 10 Day Notice was served the tenants in accordance with section 88 of the *Act*.

Conclusion

The landlord's application for an Order of Possession based on the 10 Day Notice dated August 15, 2020 is dismissed, without leave to reapply.

The 10 Day Notice dated August 15, 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: January 12, 2021

Residential Tenancy Branch