



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 January 11, 2021, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had the tenant and a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on January 11, 2021.

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 November 10, 2020, indicating a monthly rent of \$750.00, due on the first day of each month for a tenancy commencing on November 10, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the December 10 Day Notice) dated December 2, 2020, for \$400.00 in unpaid rent. The December 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 11, 2020;

- A copy of a second 10 Day Notice to End Tenancy for Unpaid Rent (the January 10 Day Notice) dated January 4, 2021, for \$1,150.00 in unpaid rent. The January 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 11, 2020;
- A copy of a witnessed Proof of Service Notice of Expedited Hearing form which indicates that the December and January 10 Day Notices were personally served to the tenant on December 2, 2020 and January 4, 2021 respectively; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

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 note that the landlord submitted a copy of a 10 Day Notice dated December 2, 2020 for \$400.00 that was due December 1, 2020. However, I find that the landlord submitted a second 10 Day Notice dated January 4, 2021 which also includes rent owing for December 2020.

I find that by including the rent for December 2020 on the January 10 Day Notice, the landlord has extended the tenant's deadline to pay the December 2020 rent to reflect the dates relating to the January 10 Day Notice. For this reason, I will only consider the portion of the landlord's application relating to the January 10 Day Notice.

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenant was duly served with the January 10 Day Notice on January 4, 2021.

I find that the fifth day for the tenant to have either paid the rent or disputed the notice was January 9, 2021.

I find that the landlord applied for dispute resolution on January 8, 2021, before the last day that the tenant had to pay the rent or dispute the January 10 Day Notice and that the landlord made their application for dispute resolution too early.

Therefore, the landlord's application for an Order of Possession and 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 and 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 28, 2021

Residential Tenancy Branch