



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1450 WEST GEORGIA INVESTMENTS LTD. C/O
WESGROUP and [tenant name suppressed to protect privacy]

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 filed by the Landlord for an order of possession and a monetary order based on unpaid rent, and to recover the filing fee paid to make the application.

The Landlord submitted a signed Proof of Service - Notice of Direct Request Proceeding document which declares that the Landlord served the Tenant with the Notice of Direct Request Proceeding and supporting documents by attaching a copy to the Tenant’s door on January 22, 2021, which service was witnessed by V.M. A photographic image of an envelope attached to the Tenant’s door was submitted in support. Based on the written submissions and evidence of the Landlord and in accordance with sections 89 and 90 of the *Act*, I find the Tenant is deemed to have received these documents on January 25, 2021, three days after they were attached to the Tenant’s door.

However, section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be given to the tenant by attaching a copy to a door at the address at which the tenant resides when seeking a monetary order.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be given to the tenant by attaching a copy to a door at the address at which the tenant resides when seeking an order of possession.

Considering the above, I find that the Landlord served the Notice of Direct Request Proceeding and supporting documents on the Tenant by attaching a copy to the Tenant's door. For this reason, and in accordance with section 89 of the *Act*, I find that the Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply. This aspect of the application has not been considered further in this decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Is the Landlord entitled to recover the filing fee 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 May 17, 2020, indicating a monthly rent in the amount of \$2,350.00 due on or before the first day of each month, for a tenancy commencing on June 1, 2020; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 4, 2021 for "900 + 25" in unpaid rent (the "10 Day Notice"). 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 January 17, 2021.

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* confirms that a notice to end tenancy given by a landlord must be in the approved form. The language in the *Act* is mandatory. In this case, the 10 Day Notice submitted by the Landlord is a 2-page document that is no longer in use. It is not in the approved form. The current 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is a 3-page document and is available on the Residential Tenancy Branch website.

Considering the above, I order that the 10 Day Notice is cancelled and of no force or effect. It is ineffective to end the tenancy. As a result, I find that the Landlord's request for an order of possession based on the 10 Day Notice is dismissed without leave to reapply.

As the Landlord has not been successful, I find that the Landlord is not entitled to recover the \$100.00 filing fee. This aspect of the application is dismissed without leave to reapply.

Conclusion

The 10 Day Notice is cancelled and of no force or effect.

The Landlord's request for an order of possession for unpaid rent based on the 10 Day Notice is dismissed without leave to reapply.

The Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

The Landlord's request to recover the \$100.00 filing fee is dismissed 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: February 16, 2021

Residential Tenancy Branch