



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 filed by the Landlord for an order of possession and a monetary order based on unpaid rent, and an order granting recovery of the filing fee.

The Landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that the Landlord served the Tenant with the Notice of Direct Request Proceeding and supporting documents by registered mail on February 28, 2021, which service was witnessed by P.C. A copy of a Canada Post receipt which included a Tracking Number was submitted in support. Pursuant to sections 89 and 90 of the *Act*, I find these documents are deemed to have been received on March 5, 2021, five days after they were mailed.

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 monetary compensation for unpaid rent pursuant to section 67 of the *Act*?
3. 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 on September 9, 2010 and by the Tenant on September 4, 2010, indicating a monthly rent in the amount of \$1,300.00 due on the first day of each month, for a tenancy commencing on October 1, 2010; and
- A copy of a Notice to End Tenancy - Residential Unit dated January 19, 2021 (the "Notice").

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.

With respect to the Landlord's request for an order of possession, section 52 of the *Act* confirms that a notice to end tenancy given by a landlord must be in the approved form. In this case, the Notice submitted into evidence is in a form that was not approved or in use at the time it was issued. The current form is a 3-page document and is available on the Residential Tenancy Branch website.

In light of the above, I order that the Notice is cancelled and is of no force or effect. Therefore, I order that the Landlord's request for an order of possession based on the Notice is dismissed without leave to reapply. The tenancy will continue until otherwise ended in accordance with the *Act*.

With respect to the Landlord's request for a monetary order, I have found that the Notice is not in the approved form and is of no force or effect. Therefore, I order that the Landlord's request for a monetary order based the Notice is dismissed with leave to reapply.

As the Landlord has not been successful, I order that the Landlord's request to recover the filing fee is dismissed without leave to reapply.

Conclusion

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

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

The Landlord's request for a monetary order based on the Notice is dismissed with leave to reapply.

As the Landlord has not been successful, I order that the Landlord's request to recover the 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: March 18, 2021

Residential Tenancy Branch