



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PREHOFER CONSTRUCTION
LTD and [tenant name suppressed to protect privacy]

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 filed 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 document which declares that the Landlord served the Tenant with the Notice of Direct Request Proceeding and supporting documents in person on February 10, 2021, which service was witnessed by G.S. Based on the written submissions and evidence of the Landlord and in accordance with section 89 of the *Act*, I find the Tenant was served with and received these documents of February 10, 2021.

Issue 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

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 August 9, 2019, indicating a monthly rent in the amount of \$874.44 plus \$30.00 in fees due on the first day of each month, for a tenancy commencing on October 1, 2013;
- Copies of Notices of Rent Increase effective May 1, 2015 (\$768.75); May 1, 2016 (\$791.04); May 1, 2017 (\$820.30); May 1, 2018 (\$853.11); and May 1, 2019 (\$874.44);
- A copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period; and
- Copies of four Breach Notices relating to noise complaints.

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.

Policy Guideline #39 confirms that when making an application for dispute resolution through the Direct Request Process, the landlord must provide copies of documents including the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The language in Policy Guideline #39 is mandatory.

In this case, I find the Landlord did not submit a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, or proof that the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

I find that the material submitted does not comply with the requirements of Policy Guideline #39, giving rise to deficiencies and ambiguities that cannot be addressed during a Direct Request Proceeding.

Considering the above, I find that the Landlord's request for an order of possession is dismissed 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: March 1, 2021

Residential Tenancy Branch