



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SEAWALL DEVELOPMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, OPRM-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 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 the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post receipt containing the tracking number to confirm this mailing took place on March 24, 2021. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on March 29, 2021, the fifth day after their registered mailing.

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*?

Background and Evidence

The landlord submitted the following relevant evidentiary material:

- A copy of the first, second, and sixth pages of a residential tenancy agreement which names a landlord who is not the applicant and was signed by the tenant on June 4, 2013, indicating a monthly rent of \$1,055.00, due on the first day of each month for a tenancy commencing on July 1, 2013

- A copy of two Notice of Rent Increase forms showing the rent being increased from \$1,055.00 to the monthly rent amount of \$1,124.63
- A copy of the first page of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 3, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

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.

I have reviewed all documentary evidence and I find the landlord has not submitted the third, fourth, and fifth pages of the tenancy agreement. The landlord has also not submitted the second and third pages of the 10 Day Notice. Finally, I find the landlord has not submitted a copy of a Proof of Service Notice to End Tenancy form to confirm the 10 Day Notice was served to the tenant.

However, despite these incomplete submissions, I find there is a more impactful issue with the documentation provided.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

In order to be effective, a notice to end a tenancy must be in writing and must
(a) be signed and dated by the landlord or tenant giving the notice,
(b) give the address of the rental unit,
*(c) **state the effective date of the notice**...and*
(e) when given by a landlord, be in the approved form...

I find that there is no effective date (the day when the tenant must move out of or vacate the site) on the partial 10 Day Notice submitted. I find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*. It is possible to amend an incorrect date on the 10 Day Notice, but the *Act* does not allow an adjudicator to input a date where none is written.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated March 3, 2021, without leave to reapply.

The 10 Day Notice dated March 3, 2021, is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice the landlord's application for a Monetary Order for unpaid rent is dismissed, with leave to reapply.

Conclusion

The landlord's application for an Order of Possession based on the 10 Day Notice dated March 3, 2021, is dismissed, without leave to reapply.

The 10 Day Notice dated March 3, 2021, 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.

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: April 13, 2021

Residential Tenancy Branch