



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 Expedited Hearing which declares that on April 24, 2021, the landlord sent the tenant the Landlord Application to End the Tenancy Early by e-mail. The landlord provided a text document indicating that an e-mail was sent to the tenant on March 24, 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 on June 22, 2020 and the tenant on June 23, 2020, indicating a monthly rent of \$2,300.00, due on the first day of each month for a tenancy commencing on July 1, 2020

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 6, 2021, for \$2,300.00 in unpaid rent. 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 March 19, 2021
- A copy of a text document indicating that an e-mail with the 10 Day Notice was sent to the tenant on March 6, 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.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act*. Policy Guideline #39 on Direct Requests provides the following requirements:

“After the Notice of Dispute Resolution Proceeding Package has been served to the tenant(s), the landlord must complete and submit to the Residential Tenancy Branch a Proof of Service Notice of Direct Request Proceeding (form RTB-44) for each tenant served.”

I find the landlord has not provided a copy of the Proof of Service Notice of Direct Request Proceeding form to establish service of the Notice of Direct Request Proceeding to the tenant. In its place, I find the landlord has submitted a Proof of Service Notice of Expedited Hearing form discussing service of a Landlord Application to End the Tenancy Early.

I find I am not able to confirm service of the Notice of Direct Request Proceeding to the tenant, which is a requirement of the Direct Request process. However, despite this error, I find there is a more impactful issue with the landlord's claim.

The landlord must serve the tenant with the 10 Day Notice as per section 88 of the *Act*. Section 88 of the *Act* allows for service by sending the 10 Day Notice to the tenant by

mail, by leaving a copy with the tenant, by leaving a copy in the tenant's mailbox or mail slot, by attaching a copy to the tenant's door, by leaving a copy with an adult who apparently resides with the tenant, or by any other means of service provided for in the regulations.

On March 1, 2021, section 43(2) of the *Residential Tenancy Regulation* was updated to provide that documents "*may be given to a person by emailing a copy to an email address **provided as an address for service by the person.***"

The landlord has indicated they served the 10 Day Notice to the tenant by e-mail. I note that the tenancy agreement includes an e-mail address in the tenant's contact information. However, the agreement does not specify that official documents can be sent to this e-mail address.

Furthermore, the tenancy agreement was signed by the tenant on June 23, 2020; however, section 43(2) of the *Regulation* did not come into effect until March 1, 2021. I find the tenant cannot have consented to use e-mail as a method of service in accordance with a regulation that did not yet exist.

I find the landlord has failed to demonstrate that e-mail service was in accordance with section 88 of the *Act* or section 43(2) of the *Residential Tenancy Regulation*. For this reason, I find that the 10 Day Notice has not been served in accordance with the *Act* and the *Regulation*.

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 6, 2021, without leave to reapply.

The 10 Day Notice dated March 6, 2021, is cancelled and of no force or effect.

For the same reason listed above, I dismiss the landlord's application for a Monetary Order for unpaid rent 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

The landlord's application for an Order of Possession based on the 10 Day Notice dated March 6, 2021, is dismissed, without leave to reapply.

The 10 Day Notice dated March 6, 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.

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: April 21, 2021

Residential Tenancy Branch