



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 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 which declares that on March 31, 2021, 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 Customer Receipt containing the tracking number to confirm this mailing. 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 April 5, 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*?

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 October 31, 2019, indicating a monthly rent of \$3,400.00, due on the first day of each month for a tenancy commencing on November 15, 2019
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 11, 2021, for \$3,400.00 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 22, 2021

- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was e-mailed to the tenant at 8:22 am on March 11, 2021
- A copy of an e-mail sent to the tenant on March 11, 2021, containing the 10 Day Notice as an attachment
- A copy of a Notice of Dispute Resolution for an application filed by the tenant on January 4, 2021, indicating the tenant provided an e-mail address to the Residential Tenancy branch as a method of contact
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

In this type of matter, the landlord must prove they served 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 to an e-mail address provided on the tenant's Application for Dispute Resolution.

I find that the Notice of Dispute Resolution submitted by the landlord indicates that the e-mail address was provided as a method of contact and not specifically for service of documents.

Furthermore, I find that the e-mail address was provided authorizing the Residential Tenancy Branch to communicate with the tenant by e-mail. There is no documentation indicating the tenant specifically authorized the landlord to use e-mail.

I find the landlord has failed to demonstrate that the tenant agreed to receive documents from the landlord by e-mail, as required by 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 11, 2021, without leave to reapply.

The 10 Day Notice dated March 11, 2021, is cancelled and of no force or effect.

Conclusion

The landlord's application for an Order of Possession based on the 10 Day Notice dated March 11, 2021, is dismissed, without leave to reapply.

The 10 Day Notice dated March 11, 2021, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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 22, 2021

Residential Tenancy Branch