



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on April 2, 2021, the landlord sent each of the tenants the Notice of Direct Request Proceeding by e-mail. The landlord provided a copy of the outgoing e-mails containing attachments of the supporting documents to confirm this service.

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

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 tenants on April 20, 2020, indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on May 1, 2020
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 5, 2021, for \$2,130.00 in unpaid rent. The 10 Day Notice provides that the tenants 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 15, 2021

- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenants by registered mail on May 5, 2021
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the 10 Day Notice was in fact sent to the tenants on March 5, 2021
- 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 tenants with the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act*.

Section 89 of the *Act* provides that a Notice of Direct Request Proceeding may be served “*by any other means of service provided for in the regulations.*”

Section 43(2) of the *Residential Tenancy Regulation* provides 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.***”

I find that the landlord has served the Notice of Direct Request Proceeding to the tenants by e-mail. However, I find there is no evidence to demonstrate that the tenants indicated documents could be served by e-mail.

I find the landlord has not demonstrated that the tenants' e-mail addresses were provided for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

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

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

- 52** *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 have reviewed all documentary evidence and I find that the address on the 10 Day Notice from where the tenants must move does not match the tenants' address on the tenancy agreement and the Application for Dispute Resolution.

I find that this error invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice of March 5, 2021, without leave to reapply.

The 10 Day Notice of March 5, 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 of March 5, 2021, is dismissed without leave to reapply.

The 10 Day Notice of March 5, 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 26, 2021

Residential Tenancy Branch