



Dispute Resolution Services

Page: 1

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 filed by the Landlord for an order of possession and a monetary order for unpaid rent and to recover the filing fee.

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 Dispute Resolution Proceeding and supporting documents by registered mail on April 1, 2021. Service in this manner was supported by Canada Post receipts which included the tracking numbers. Pursuant to section 89 and 90 of the *Act*, I find these documents are deemed to have been received by the Tenant on April 6, 2021, five days after they were mailed.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent pursuant to sections 46 and 67 of the *Act*?
3. 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 parties on July 1, 2016, indicating a monthly rent in the amount of \$1,450.00 due on or before the first day of each month, for a tenancy commencing on August 1, 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2021 for \$1,688.00 in unpaid rent (the “10 Day Notice”).

Other documents were submitted into evidence by the Landlord. However, considering my findings below, it has not been necessary to consider them further in this decision.

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.

Section 52 of the *Act* confirms that to be effective a notice to end tenancy given by a landlord must be in the approved form. In this case, the 10 Day Notice submitted into evidence is in a 2-page form that was no longer approved or in use at the time it was issued. The current form is a 3-page document and is available on the Residential Tenancy Branch website.

Considering the above, I order that the 10 Day Notice is cancelled and is of no force or effect. As a result, I order that the Landlord’s requests for an order of possession and a monetary order based on the 10 Day Notice are dismissed without leave to reapply. To obtain relief, a new notice to end tenancy that complies with the *Act* must be issued.

I also note that the Landlord did not submit documentation to support the rent increase from \$1,450.00 (as in the tenancy agreement) to \$1,680.00 (as in the Direct Request Worksheet), although I make no finding in that regard.

As the Landlord has not been successful, I order that the request to recover the filing fee is dismissed without leave to reapply.

Conclusion

The 10 Day Notice is cancelled and is of no force or effect.

The Landlord's requests for an order of possession and a monetary order based on the 10 Day Notice are dismissed without leave to reapply.

The Landlord's request to recover the filing fee is dismissed 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: May 4, 2021

Residential Tenancy Branch