



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-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 an order granting recovery of 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 a Notice of Dispute Resolution Proceeding and supporting documents in person on April 30, 2021. Receipt of these documents was acknowledged by the Tenant’s signature. Pursuant to section 89 and 90 of the *Act*, I find these documents were served on and received by the Tenant on April 30, 2021.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities pursuant to sections 46 and 55 of the *Act*?
2. Is the Landlord entitled to an order granting recovery of the filing fee pursuant to section 72 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 April 29, 2016, indicating monthly rent in the amount of \$525.00 due on the first day of each month, for a tenancy commencing on May 1, 2016;
- Copies of Notices of Rent Increase effective May 1, 2018 (\$525.00 to \$544.00) and May 1, 2020 (\$579.00 to \$594.00);
- Receipts dated March 2 and March 31, 2021 confirming payments of \$400.00 and \$500.00 respectively;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 1, 2021 for \$4,592.00 in unpaid rent (the “10 Day Notice”). 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 12, 2021;
- A copy of a signed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served on the Tenant in person on March 1, 2021; and
- A copy of a Direct Request Worksheet showing the total rent owing on March 1, 2021.

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 46(1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

[Reproduced as written.]

This provision provides that a landlord may end a tenancy if rent remains unpaid on any day after the day it is due.

In this case, I find that the tenancy agreement submitted indicates that the monthly rent is due “on or before the first calendar day of each month”. I also find that the 10 Day Notice submitted was dated and served on the Tenant in person on March 1, 2021, the day rent is due, which is not in accordance with section 46(1) of the *Act*.

Therefore, I find that the Landlord has not complied with the provisions of section 46(1) of the *Act* regarding the 10 Day Notice issued to the Tenant.

Therefore, I find that the 10 Day Notice is cancelled and of no force or effect.

As a result, I find that the Landlord’s request for an order of possession based on the 10 Day Notice is dismissed without leave to reapply.

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

Conclusion

I order that the 10 Day Notice is cancelled and is of no force or effect.

I order that the Landlord’s request for an order of possession based on the 10 Day Notice is dismissed without leave to reapply.

I order that 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 13, 2021

Residential Tenancy Branch