



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-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 one signed Proof of Service Notice of Direct Request Proceeding which declares that on May 3, 2021, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on May 8, 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*?

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 and Tenant A.H. on December 28, 2020, indicating a monthly rent of \$800.00, due on the thirty-first day of each month for a tenancy commencing on February 15, 2021

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 3, 2021, for \$800.00 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 20, 2021
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door on March 4, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that, of the \$800.00 identified as owing in the 10 Day Notice, \$400.00 was paid on March 2, 2021 and \$400.00 was paid on March 12, 2021

Analysis

Section 46(4)(a) of the *Act* states that within five days of a tenant receiving the 10 Day Notice, the tenant may pay the overdue rent, in which case the 10 Day Notice has no effect.

In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on March 7, 2021, three days after its posting. I find that the fifth day for the tenant to have paid the rent was March 12, 2021.

I find the full rent listed on the 10 Day Notice was paid by the tenant. Furthermore, I find the final payment was made on March 12, 2021 on the last day the tenant had to pay the rent.

For this reason, and in accordance with section 46(4)(a) of the *Act*, I find that the 10 Day Notice dated March 3, 2021 is of no force or effect.

Therefore, the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated March 3, 2021 is dismissed, without 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

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice dated March 3, 2021, without leave to reapply.

The 10 Day Notice dated March 3, 2021 is cancelled and is of no force or effect.

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

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: May 17, 2021

Residential Tenancy Branch