



Dispute Resolution Services

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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 which declares that the Tenant was served with a Notice of Dispute Resolution Proceeding and supporting documents by registered mail on May 12, 2021. Service in this manner was supported by a date-stamped Canada Post Customer Receipt which included a tracking number. Pursuant to sections 89 and 90 of the *Act*, I find these documents are deemed to have been received on May 17, 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 October 28, 2014, indicating a monthly rent in the amount of \$850.00 due on or before the first calendar day of each month, for a tenancy commencing on November 1, 2014;
- Copies of Notices of Rent Increase effective November 1, 2019 (from \$943.29 to \$966.87) and November 1, 2020 (from \$966.87 to \$992.00);
- A copy of a Resident Ledger for the period from November 2, 2020 to May 1, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 7, 2021 for \$1,973.74 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 April 22, 2021;
- A copy of signed Proof of Service Notice to End Tenancy document which indicates that the 10 Day Notice was served on the Tenant by registered mail April 7, 2021, although a written note provided with the application indicates the 10 Day Notice was served by “regular mail”; and
- A copy of a Direct Request Worksheet showing the rent owing in the amount of \$966.87.

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the tenant 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 tenant 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.

In this case, I find there are ambiguities with respect to service of the 10 Day Notice. The Proof of Service Notice to End Tenancy document indicates the 10 Day Notice was served on the Tenant by registered mail. However, the Landlord has not provided documentation in support of service in this manner such as a Canada Post registered mail receipt and printed tracking report as required under Policy Guideline #39.

In addition, the Landlord indicated in the application that the 10 Day Notice was served by “regular mail to the tenant’s rental address”. In addition to contradicting the Landlord’s statement in the Proof of Service Notice to End Tenancy document, I note the Landlord did not provide a copy of documentation in support of service in this manner.

Further, I find there are discrepancies with respect to the amount of rent due. The 10 Day Notice indicates that rent in the amount of \$1,973.74 remained outstanding as of April 7, 2021. The Direct Request Worksheet discloses an outstanding amount of \$966.87. The amount claimed in the Landlord’s application is \$1,106.87.

The Landlord has also not provided Notices of Rent Increase to justify rent increases from \$850.00 per month in 2014 to \$943.29 per month in 2019. However, even if notice of rent increases were provided for this period, there are concerns with respect to the validity of the Notice of Rent Increase effective November 1, 2020. Ministerial Order No. M089, dated March 30, 2020, stipulated that a notice of rent increase given during the state of emergency made on March 18, 2020 is ineffective to increase rent.

Considering the above ambiguities, I find I am unable to confirm service of the 10 Day Notice on the Tenant or the amount of rent due. Therefore, I find that the Landlord’s request for a monetary order and an order of possession for unpaid rent are dismissed with leave to reapply.

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

Conclusion

The Landlord’s requests for a monetary order and an order of possession for unpaid rent are dismissed with leave to reapply.

As the Landlord has not been successful, 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 21, 2021

Residential Tenancy Branch