



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

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 Landlord served the Tenant with a Notice of Dispute Resolution Proceeding and supporting documents by registered mail on May 12, 2021. Copies of Canada Post receipts which included the tracking number were submitted in support. Pursuant to section 89 and 90 of the Act, I find these documents are deemed to have been received by the Tenant on May 17, 2021, five days after they were mailed.

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.

In this case, I find there are inconsistencies or ambiguities in the evidentiary material that cannot be clarified in a Direct Request Proceeding.

First, the application indicates the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 5, 2021 (the “10 Day Notice”) was served on the Tenant by attaching a copy to the Tenant’s door on April 5, 2021. However, the Proof of Service Notice to End Tenancy document indicates that the 10 Day Notice was served on the Tenant by attaching a copy to the Tenant’s door on April 30, 2021, which service was witnessed by

M.V. This is also the date the Landlord's application was made. As a result, I find I am unable to confirm the date the 10 Day Notice was served on the Tenant.

Second, the Landlord did not submit Notices of Rent Increase to justify all rent increases since the tenancy began. Absent from the Landlord's evidence were documents relating to increases from \$1,755.00 to \$1,788.34 and from \$1,906.95 to \$1,977.50. I also note the Landlord submitted a Notice of Rent Increase dated October 5, 2016 in relation tenants R.M., P.R.M., and P.B.D.S.

Finally, although the Landlord does not appear to be claiming rent as indicated in a Notice of Rent Increase dated December 6, 2019 and effective April 1, 2020, I note concerns regarding the effectiveness of that document. Ministerial Order No. M089 prohibited rent increases that come into effect while it applies. However, I make no findings in that regard.

Considering the above, I find the Landlord's requests for an order of possession and a monetary order 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 \$100.00 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 25, 2021

Residential Tenancy Branch