



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR

Introduction

This hearing dealt with the adjourned Direct Request Application by the Landlord filed under the Residential Tenancy Act (the “*Act*”) on February 26, 2021. The Landlord is requesting an order of possession to enforce a 10-Day Notice for Unpaid Rent and Utilities (the “*Notice*”) issued February 8, 2021, and for a monetary order for unpaid rent. The matter was set for a conference call.

The Landlord’s Agent (the “Landlord”) attended the hearing and was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that they served the Tenant with the Notice of Hearing documents by Canada Post Registered mail sent to the Tenant on March 20, 2021; a Canada Post tracking number was provided as proof of service. Pursuant to sections 89 and 90 of the *Act*, I find these documents are deemed to have been received on March 25, 2021, five days after they were mailed, and that they had been duly served with the Notice of Hearing in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to an order of possession pursuant to section 55 of the *Act*?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The Landlord recorded on their application that this tenancy began on December 12, 2020, as a month-to-month tenancy. That rent in the amount of \$1,600.00 is to be paid by the first day of each month and that the Tenant had paid an \$800.00 security deposit at the outset of this tenancy. The Landlord testified that there had been a signed tenancy agreement for this tenancy but that the Tenant holds the only copy of that document.

The Landlord testified that the Tenant was served with the Notice to end tenancy on February 8, 2021, by posting a copy of the Notice to the front door of the rental unit. The Landlord submitted a copy of the Proof of Service form for a 10-Day Notice into documentary evidence and a picture of the Proof of Service form attached to the front door of the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

After reviewing the Landlord's documentary evidence, I find that on a balance of probabilities, the Landlord served the Tenant with the Residential Tenancy Branch (RTB) form titled "Proof of Service – Notice to End Tenancy and Written Demand to Pay Utilities" (#RTB-34), which is not a legal notice to end tenancy.

Had the Landlord wished to end this tenancy for non-payment of rent, the Landlord needed to serve the Tenant with the correct form, which in this case would have been #RTB-30 titled "10-Day Notice to End Tenancy For Unpaid Rent or Utilities."

As there is no evidence before me that #RTB-30, the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities, has been served to this Tenant, I must dismiss the Landlord's claim for an order of possession.

I dismiss the Landlord's application for a monetary order for unpaid rent with leave to reapply once they have issued the correct Notice.

Conclusion

I dismiss the Landlord's application for an order of possession to enforce a Notice to end tenancy issued on February 8, 2021.

I dismiss the Landlord's application for a monetary order for unpaid rent with 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: June 21, 2021

Residential Tenancy Branch