



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 signed Proof of Service Notice of Direct Request Proceeding documents which declare that K.F. served each Tenant with a Notice of Dispute Resolution Proceeding and supporting documents by registered mail on May 25, 2021, which service was witnessed by the Landlord. Canada Post receipts which included the tracking numbers 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 Tenants on May 30, 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 recover 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 2, 2014, indicating a monthly rent in the amount of \$1,000.00 due on the first day of each month, for a tenancy commencing on April 1, 2014;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 2, 2021 for \$2,200.00 in unpaid rent (the “10 Day Notice”). The 10 Day Notice provides that the Tenants 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 May 12, 2021;
- A copy of signed Proof of Service Notice to End Tenancy document which indicate that K.F. served the 10 Day Notice on the Tenants by leaving a copy on the windshield of a truck belonging to the Tenant S.D. on May 2, 2021, which service was witnessed by the Landlord with a police officer present; and
- A copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

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.

Policy Guideline #39 provides guidance to landlords making an application for dispute resolution under the Direct Request process. It confirms that a landlord must prove the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and that service may include any method of service allowed under the *Act*.

In this case, the Landlord has indicated that the 10 Day Notice was served on the Tenants by leaving a copy on the windshield of a truck belonging to the Tenant S.D. The Landlord indicated the 10 Day Notice could not be attached to the Tenants' door "due to dogs & potential harm". Despite the Landlord's safety concerns, service on the windshield of a vehicle is not a method of service permitted under the *Act*. I find the Landlord's safety concerns could have been met by serving the 10 Day Notice by registered mail, which is a method of service permitted under the *Act*.

Considering the above, I find the 10 Day Notice was not served on the Tenants in accordance with the *Act* and Policy Guideline #39. As a result, I find that the Landlord's requests for an order of possession and a monetary order for unpaid rent based on the 10 Day Notice 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

I order that the Landlord's requests for an order of possession and a monetary order for unpaid rent based on the 10 Day Notice are dismissed with 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: June 1, 2021

Residential Tenancy Branch