



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 by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a copy of Canada Post Tracking Report containing a tracking number to confirm a package was sent by Expedited Parcels on June 8, 2021.

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 the tenant on December 1, 2020, indicating a monthly rent of \$750.00, due on the first day of each month for a tenancy commencing on December 1, 2020
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 5, 2021, for \$750.00 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 May 14, 2021

- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was handed to an adult who apparently resides with the tenant at 3:45 pm on May 5, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

In this type of matter, the landlord must prove they served the tenant with the Notice of Dispute Resolution Proceeding– Direct Request and all documents in support of the application in accordance with section 89 of the *Act*. Policy Guideline #39 on Direct Requests provides the following requirements:

“After the Notice of Dispute Resolution Proceeding Package has been served to the tenant(s), the landlord must complete and submit to the Residential Tenancy Branch a Proof of Service Notice of Direct Request Proceeding (form RTB-44) for each tenant served.”

I note that the landlord submitted a copy of a Canada Post Tracking Report containing a tracking number to confirm a package was sent on June 8, 2021. However, I find the landlord has not provided a copy of the Proof of Service Notice of Direct Request Proceeding form which is a requirement of the Direct Request process as detailed in Policy Guideline #39.

While I find the landlord has not provided the documentation required to establish service of the Direct Request documents, I find there is a more impactful issue with the landlord’s application.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*
*(a) **be signed** and dated by the landlord or tenant giving the notice,*
(b) give the address of the rental unit,
(c) state the effective date of the notice...and
(e) when given by a landlord, be in the approved form...

I have reviewed all documentary evidence and I find that the 10 Day Notice is not signed by the landlord. I further find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*.

Therefore, I dismiss the landlord’s application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated May 5, 2021, without leave to reapply.

The 10 Day Notice dated May 5, 2021 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, the landlord's application for a Monetary Order for unpaid rent is dismissed, with 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

The landlord's application for an Order of Possession based on the 10 Day Notice dated May 5, 2021, is dismissed, without leave to reapply.

The 10 Day Notice dated May 5, 2021, is cancelled and of no force or effect.

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

I dismiss the landlord's application for a Monetary Order for unpaid rent, with leave to reapply.

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: June 15, 2021

Residential Tenancy Branch