



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, MNR-DR**

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 and a monetary order based on unpaid rent.

The Landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on July 15, 2021, the Landlord sent the Tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

Based on the written submissions and evidence of the Landlord and in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on July 15, 2021 and are deemed to be received by the Tenant on July 20, 2021, the fifth day after they were mailed.

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*?

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 a previous Landlord(property management company) and the Tenant on May 30, 2019, indicating a monthly rent of \$2000.00, due on the first day of each month for a tenancy commencing on July 1, 2019 . The Landlord added a note with the tenancy agreement that states that the rent amount was reduced to \$1,950.00 per month.
- A copy of a management agreement dated March 11, 2021 that indicates a change in property management company to the current one effective May 1, 2021.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated June 4, 2021, for \$3,900.00 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 June 17, 2021.
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the Tenant at the rental unit by registered mail on June 7, 2021.The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was deemed served with the 10 Day Notice on June 12, 2021, five days after it was mailed.

Section 46 (4) of the *Act* states that within five days of a Tenant receiving the 10 Day Notice, the Tenant may either pay the rent or dispute the 10 Day Notice.

I find that the fifth day for the Tenant to have either paid the rent or disputed the 10 Day Notice was June 17, 2021. I further find that the earliest date that the Landlord could have applied for dispute resolution was June 18, 2021.

I find that the Landlord applied for dispute resolution on June 17, 2021, on the last day that the Tenant had to pay the rent indicated on the 10 Day Notice in full or dispute the 10 Day Notice. I further find that the Landlord made their application for dispute resolution too early.

Therefore, the Landlord's application to end this tenancy and obtain an order of possession based on the 10 Day Notice dated June 4, 2021 is dismissed, with leave to reapply.

For the same reasons identified above, the Landlord's application for a monetary order for unpaid rent is dismissed with leave to reapply.

Conclusion

I dismiss the Landlord's application for an order of possession based on the 10 Day Notice dated June 4, 2021, with leave to reapply.

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: July 21, 2021

Residential Tenancy Branch