



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-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 Landlords for an order of possession and a monetary order for unpaid rent and to recover the filing fee.

The Landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that they served the Tenant with a Notice of Dispute Resolution Proceeding and supporting documents by registered mail on July 15, 2021. Service in this manner was supported by a date-stamped Canada Post registered mail receipt which included the tracking number. Pursuant to sections 89 and 90 of the *Act*, I find these documents are deemed to have been received by the Tenant on July 20, 2021, five days after they were mailed.

Issues to be Decided

1. Are the Landlords entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Are the Landlords entitled to a monetary order for unpaid rent pursuant to sections 46 and 67 of the *Act*?
3. Are the Landlords 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 Landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on December 11, 2020, indicating a monthly rent in the amount of \$1,000.00 due on the first day of each month, for a tenancy commencing on December 20, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 6, 2021 for \$2,100.00 in unpaid rent (the “10 Day Notice”). 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 16, 2021;
- A copy of a signed Proof of Service Notice to End Tenancy document which indicates that the 10 Day Notice was served on the Tenant in person on June 5, 2021; and
- A copy of a Direct Request Worksheet showing the rent due 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.

I have reviewed all documentary evidence and I find there is a discrepancy in the Landlords’ documentary evidence that cannot be resolved during a Direct Request Proceeding. Specifically, the 10 Day Notice is dated June 6, 2021. However, the Proof of Service Notice to End Tenancy document indicates it was served on the Tenant on June 5, 2021, the day before. Service was not witnessed and there was insufficient evidence elsewhere in the materials to reconcile the discrepancy. As a result, I find I am unable to confirm whether the 10 Day Notice was served on the Tenant.

Considering the above, I find that the Landlords' request for an order of possession and a monetary order for unpaid rent are dismissed with leave to reapply.

As the Landlords have not been successful, I find that their 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: July 21, 2021

Residential Tenancy Branch