



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 to obtain an Order of Possession based on unpaid rent and to obtain monetary compensation for unpaid rent.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlord on July 12, 2021.

The landlord submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on July 23, 2021, the landlord sent each of the tenants 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 Receipts containing the tracking numbers to confirm these mailings.

Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on July 23, 2021 and are deemed to have been received by the tenants on July 28, 2021, the fifth day after their registered mailing.

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 the landlord and Tenant K.P.M. on April 24, 2019, indicating a monthly rent of \$2,250.00, due on the first day of each month for a tenancy commencing on May 1, 2019
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 2, 2021, for \$2,200.00 in unpaid rent. 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 July 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 tenants by e-mail and by registered mail at 2:55 pm on July 2, 2021
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the 10 Day Notice was sent to the tenants on July 2, 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 tenants with the 10 Day Notice as per section 88 of the *Act*. Section 88 of the *Act* allows for service by sending the 10 Day Notice to the tenant by any other means of service provided for in the regulations.

On March 1, 2021, section 43(2) of the *Residential Tenancy Regulation* was updated to provide that documents “*may be given to a person by emailing a copy to an email address provided as an address for service by the person.*”

The landlord has indicated they served the 10 Day Notice to the tenants by e-mail. However, I find there is no evidence to demonstrate that the tenants provided their e-mail address for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

I find the landlord has failed to demonstrate that e-mail service was in accordance with the *Act* and the *Regulation*. For this reason, I find I cannot consider the portion of the landlord’s application relating to the 10 Day Notice sent by e-mail.

However, in accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served by registered mail on July 2, 2021 and is deemed to have been received by tenants on July 7, 2021, five days after its mailing.

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 tenants to have either paid the rent or disputed the notice was July 12, 2021. I further find that the earliest date that the landlord could have applied for dispute resolution was July 13, 2021.

I find that the landlord applied for dispute resolution on July 12, 2021, the last day that the tenants had to dispute the 10 Day Notice and 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 July 2, 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 July 2, 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: August 10, 2021

Residential Tenancy Branch