



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'AKOLA HOUSING SOCIETY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR-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 to obtain an order of possession based on unpaid rent, and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the Landlord on August 3, 2021.

The Landlord submitted a copy of a signed Proof of Service Notice of Direct Request Proceeding form which indicates that on August 18, 2021, the Landlord sent the Tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The copy of the Canada Post Customer Receipt containing the tracking number and the copy of a tracking report provided by the Landlord to confirm that they served the Tenant both indicate August 19, 2021 as the date the Direct Request Proceeding documents were sent to the Tenant by registered mail.

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 August 19, 2021 and are deemed to have been received by the Tenant on August 24, 2021, the fifth day after they were mailed.

Issues 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 recover the filing fee for this application 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 Landlord and the Tenant on January 4, 2018, indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on February 1, 2018;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated July 23, 2021, for \$557.00 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 August 7, 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 by registered mail at 5:08pm on July 23, 2021;
- a copy of a Canada Post Customer Receipt containing the tracking number to confirm the 10 Day Notice was sent to the Tenant on July 23, 2021; and;
- a copy of a Direct Request Worksheet.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on July 23, 2021 and is considered to have been received by the Tenant on July 28, 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.

The definition of days in the Residential Tenancy Branch Rules of Procedure states that: “If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open”.

I find that the fifth day for the Tenant to have either paid the rent or disputed the notice was August 2, 2021, which was a statutory holiday. The Residential Tenancy Branch is

closed on statutory holidays, meaning that the latest day on which the Tenant could have disputed the 10 Day Notice was on Tuesday, August 3, 2021.

I further find that the Landlord applied for dispute resolution on August 3, 2021, the last day that the Tenant had to dispute the 10 Day Notice, and that the earliest date that the Landlord could have applied for dispute resolution was August 4, 2021. 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 23, 2021, 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

I dismiss the Landlord's application for an order of possession based on the 10 Day Notice dated July 23, 2021 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: September 09, 2021

Residential Tenancy Branch