



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 and a monetary order based on unpaid rent.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the Landlord on August 10, 2021.

The Landlord submitted two copies of a Proof of Service Notice of Direct Request Proceeding form which declare that on August 27, 2021, the Landlord sent each 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 numbers to confirm they served the Tenants.

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 27, 2021 and are deemed to have been received by the Tenants on September 1, 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 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 the third page of a residential tenancy agreement dated February 1, 2020;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated August 8, 2021, for \$1,800.00 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 August 16, 2021;

Analysis

I note the Landlord indicates on the application that they served the Tenants a 10 Day Notice to End Tenancy by posting it the door on July 3, 2021. However, the Landlord has not provided a copy of a 10 Day Notice with a July date and instead has provided a copy of a 10 Day Notice dated August 8, 2021.

In this type of matter, the Landlord must prove that they served the Tenants with the 10 Day Notice in a manner that is considered necessary as per sections 71(2)(a) and 88 of the *Act*. Residential Tenancy Policy Guideline #39 provides the key elements that need to be considered when making an application for Direct Request.

Proof of service of the 10 Day Notice to End Tenancy may take the form of:

- registered mail receipt and printed tracking report;
- a receipt signed by the tenant, stating they took hand delivery of the document(s); or
- a witness statement that they saw the landlord deliver the document(s).

The Landlord has not provided proof of service of the 10 Day Notice dated August 8, 2021 as listed in the Residential Tenancy Policy Guideline #39 above.

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.

If the Landlord served the Tenants the 10 Day Notice dated August 8, 2021 by posting it to the door of the rental unit, the 10 Day Notice would be deemed received by the Tenants on August 11, 2021, three days later. I find that the fifth day for the Tenants to have either paid the rent or disputed the notice would have been August 16, 2021. I further find that the earliest date that the Landlord could have applied for dispute resolution was August 17, 2021.

I find that the Landlord applied for dispute resolution on August 10, 2021, before 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 August 8, 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 August 8, 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: September 10, 2021

Residential Tenancy Branch