



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 24, 2021.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on September 12, 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 envelope containing the Canada Post tracking number to confirm this mailing.

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 September 12, 2021 and are deemed to have been received by the tenant on September 17, 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 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 June 9, 2019, indicating a monthly rent of \$2,100.00, due on the first day of each month for a tenancy commencing on June 9, 2019
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 16, 2021, for \$12,195.00 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 31, 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 and by e-mail at 2:32 pm on August 16, 2021
- A copy of an envelope containing the Canada Post tracking number to confirm the 10 Day Notice was sent by registered mail on August 16, 2021
- A copy of an e-mail sent from the landlord to the tenant on August 16, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

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.

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*.

Policy Guideline #39 provides that service of the 10 Day Notice by e-mail may be proven by providing:

- A copy of the outgoing email showing the email address used, the date the email was sent, and any attachments included in the email and
- The RTB-51 - Address for Service or other document that sets out the party's email address for service

On the Proof of Service Notice to End Tenancy, the landlord has indicated that they sent the 10 Day Notice to the tenant by e-mail. However, I find the copy of the outgoing e-mail submitted by the landlord does not show any attachments were included in the e-mail.

I also find the landlord has not submitted any documentation showing that the tenant provided their e-mail address specifically for service of documents, which is a requirement of section 43 of the *Residential Tenancy Regulation*.

I find I am not able to confirm service of the 10 Day Notice to the tenant by e-mail. For this reason, I cannot consider the portion of the landlord's application relating to the 10 Day Notice sent by e-mail.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served by registered mail on August 16, 2021 and is deemed to have been received by the tenant on August 21, 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 tenant to have either paid the rent or disputed the notice was August 26, 2021. I further find that the earliest date that the landlord could have applied for dispute resolution was August 27, 2021.

I find that the landlord applied for dispute resolution on August 24, 2021, before the last day that the tenant 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 16, 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 August 16, 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 28, 2021

Residential Tenancy Branch