



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Preliminary Matters

I note that the tenants' rental address on the Application for Dispute Resolution submitted by the landlords is slightly different than the rental address shown on the tenancy agreement, the 10 Day Notice, and all other documents submitted with the Application. Section 64(3)(c) of the *Act* allows me to amend the application to match the tenancy agreement and the 10 Day Notice, which I have done.

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 landlords to obtain an Order of Possession based on unpaid rent, to obtain monetary compensation for 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 landlords on August 16, 2021.

The landlords submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on September 10, 2021, the landlords sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm these mailings.

Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on September 10, 2021 and are deemed to have been received by the tenants on September 15, 2021, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenants on December 10, 2019, indicating a monthly rent of \$2,000.00, due on the first day of each month for a tenancy commencing on December 15, 2019
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 6, 2021, for \$2,000.00 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 22, 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 registered mail at 5:46 pm on August 7, 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 August 7, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

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 August 7, 2021 and is deemed to have been received by the tenants on August 12, 2021, five days after its registered 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 August 17, 2021. I further find that the earliest date that the landlords could have applied for dispute resolution was August 18, 2021.

I find that the landlords applied for dispute resolution on August 16, 2021, before the last day that the tenants had to dispute the 10 Day Notice and that the landlords made their application for dispute resolution too early.

Therefore, the landlords' application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated August 6, 2021 is dismissed, with leave to reapply.

For the same reasons identified above, the landlords' application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlords' application for an Order of Possession based on the 10 Day Notice dated August 6, 2021, with leave to reapply.

I dismiss the landlords' application for a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlords' 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 24, 2021

Residential Tenancy Branch