



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, FFL

Preliminary Matters

I note that the tenant's rental address on the Application for Dispute Resolution submitted by the landlord does not include the unit number that appears 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 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 19, 2021.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on September 9, 2021, the landlord sent 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 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 9, 2021 and are deemed to have been received by the tenant on September 14, 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 August 30, 2020, indicating a monthly rent of \$1,100.00 for a tenancy commencing on September 1, 2020
- A copy of a second residential tenancy agreement which was signed by the landlord and the tenant on May 21, 2021, indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on June 1, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 25, 2021, for \$600.00 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 July 10, 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 2:00 pm on June 25, 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 June 25, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that \$1,100.00 was paid on June 30, 2021

Analysis

Section 46(4) of the *Act* states that within five days of a tenant receiving the 10 Day Notice, the tenant may pay the rent, in which case the notice has no effect.

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 June 25, 2021 and is deemed to have been received by the tenant on June 30, 2021, five days after its registered mailing.

I find that the fifth day for the tenant to have paid the rent was July 5, 2021. The Direct Request Worksheet indicates that the tenant made a payment of \$1,100.00 on June 30, 2021.

I find the tenant has paid the full \$600.00 listed on the 10 Day Notice within the five days permitted under the *Act*. For this reason, I find the 10 Day Notice has no effect.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated June 25, 2021, without leave to reapply.

The 10 Day Notice dated June 25, 2021, is cancelled and of no force or effect.

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

The landlord's application for an Order of Possession based on the 10 Day Notice dated June 25, 2021, is dismissed, without leave to reapply.

The 10 Day Notice dated June 25, 2021, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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 22, 2021

Residential Tenancy Branch