



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management Services
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-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, 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 landlord on August 20, 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 tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit.

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 monetary compensation for unpaid rent pursuant to section 67 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 12, 2021, indicating a monthly rent of \$1,650.00, due on the first day of each month for a tenancy commencing on June 13, 2021
- A copy of the first two pages of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) for \$1,650.00 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
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 10:00 am on August 6, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

In this type of matter, the landlord must prove they served the tenant with the Notice of Dispute Resolution Proceeding – Direct Request and all documents in support of the application in accordance with section 89 of the *Act*.

The Proof of Service Notice of Direct Request Proceeding instructs the landlord to attach a completed Canada Post Registered Mail Receipt to confirm service.

I note that the landlord hand-write a tracking number on the Proof of Service form; however, I find the landlord has not submitted a copy of the Canada Post Registered Mail Receipt itself. In place of the receipt, the landlord submitted a blank document.

Although the landlord did not submit the documentation required to confirm service of the Direct Request documents to the tenant, I find there is a more impactful issue with the landlord's claim.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

- 52** *In order to be effective, a notice to end a tenancy must be in writing and must*
- (a) **be signed and dated** by the landlord or tenant giving the notice,*
 - (b) give the address of the rental unit,*
 - (c) **state the effective date of the notice...**and*
 - (e) when given by a landlord, be in the approved form...*

I have reviewed all documentary evidence and I find that the 10 Day Notice is not signed or dated by the landlord. I also find that there is no effective date (the day when the tenant must move out of or vacate the site) on the 10 Day Notice.

I further find that these omissions invalidate the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice served on August 6, 2021, without leave to reapply.

The 10 Day Notice served on August 6, 2021 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, the landlord's application for a Monetary Order for unpaid rent 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

The landlord's application for an Order of Possession based on the 10 Day Notice served on August 6, 2021, is dismissed, without leave to reapply.

The 10 Day Notice served on August 6, 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 for a Monetary Order for unpaid rent, 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: October 05, 2021

Residential Tenancy Branch