



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 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 September 21, 2021.

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on October 1, 2021, the landlords sent the 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 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 October 1, 2021 and are deemed to have been received by the tenant on October 6, 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

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 landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on January 29, 2020, indicating a monthly rent of \$1,400.00, due on the first day of each month for a tenancy commencing on March 1, 2020
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 4, 2021, for \$2,800.00 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 September 15, 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 on September 20, 2021
- A copy of a Canada Post tracking report and confirmation of delivery containing the tenant's signature to confirm the 10 Day Notice was sent to the tenant on September 11, 2021 and was received on September 20, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

In accordance with section 88 of the *Act*, I find that the registered mailed 10 Day Notice was received by the tenant on September 20, 2021.

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 registered mailed notice was September 25, 2021.

I find that the landlords applied for dispute resolution on September 21, 2021, before the last day that the tenant had to dispute the registered mailed 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 registered mailed 10 Day Notice is dismissed, with leave to reapply.

The landlords have also indicated they sent the tenant a 10 Day Notice by e-mail. 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

I find the landlords have not provided a copy of the outgoing e-mail containing the 10 Day Notice as an attachment to confirm service of the 10 Day Notice to the tenant.

I also find there is no evidence to demonstrate that the tenant indicated documents could be served by e-mail. I find the landlords have not demonstrated that the tenant's e-mail address was provided for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

Therefore, I dismiss the landlords' application to end this tenancy and obtain an Order of Possession based on the e-mailed 10 Day Notice, 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 and 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: November 12, 2021

Residential Tenancy Branch