



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 October 1, 2021.

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on October 7, 2021, the landlords sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit.

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 tenant, indicating a monthly rent of \$1,400.00, due on the first day of each month for a tenancy commencing on August 1, 2021
- A copy of the first two pages of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 10, 2021, for \$1,400.00 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 Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the 10 Day Notice was sent to the tenant on September 10, 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 landlords to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such material does not lend itself to ambiguity or give rise to issues that may need clarification beyond the purview of a Direct Request Proceeding. If the landlords 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 landlords 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 landlords to attach a completed Canada Post Registered Mail Receipt to confirm service.

I note that the landlords wrote a tracking number on the Proof of Service form; however, I find the landlords have not submitted a copy of the Canada Post Registered Mail Receipt itself.

I find the landlords have not submitted the documentation required to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the tenant. However, despite this deficiency, I find there is a more impactful issue with the landlords' application.

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

- 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 there is no effective date (the day when the tenant must move out of or vacate the site) on the 10 Day Notice. I find that this omission invalidates the 10 Day Notice as the landlords have not complied with the provisions of section 52 of the *Act*. It is possible to amend an incorrect date on the 10 Day Notice, but the *Act* does not allow an adjudicator to input a date where none is written.

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

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

For the same reasons identified in the 10 Day Notice 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

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

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

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

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: November 09, 2021

Residential Tenancy Branch