



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, MNU-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 and utilities, to obtain monetary compensation for unpaid rent and utilities, 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 January 4, 2022.

The landlord submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on January 13, 2022, the landlord served each tenant the Notice of Dispute Resolution Proceeding - Direct Request in person. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding forms to confirm personal service.

Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were duly served to the tenants on January 13, 2022.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and utilities pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and utilities 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 tenants on November 18, 2021, indicating a monthly rent of \$2,200.00, due on the first day of each month for a tenancy commencing on December 15, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 2, 2022, for \$2,200.00 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 January 15, 2022
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served to the tenants in person
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

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 10 Day Notice is dated January 2, 2022. I also find that the landlord applied for dispute resolution on January 4, 2022, less than five days since the 10 Day Notice was issued.

I find the landlord did not provide the tenants the five days to comply with section 46(4) of the *Act* by either paying the rent or disputing the 10 Day Notice.

I find the landlord made their application for dispute resolution too early.

Therefore, the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated January 2, 2022 is dismissed, with leave to reapply.

For the same reasons identified above, the landlord's application for a Monetary Order for unpaid rent and utilities 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

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice dated January 2, 2022, with leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid rent and utilities 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: January 31, 2022

Residential Tenancy Branch