



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 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 applicants on January 18, 2022.

The applicants submitted a signed Proof of Service Notice of Direct Request Proceeding form which declares that on February 2, 2022, the applicants sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The applicants provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm they served the tenant.

Based on the written submissions and evidence of the applicants and in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on February 2, 2022 and are deemed to have been received by the tenant on February 7, 2022, the fifth day after they were mailed.

Issues to be Decided

Are the applicants entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the applicants entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the applicants 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 applicants submitted the following relevant evidentiary material:

- a copy of a residential tenancy agreement which names a landlord who is not either of the applicants and was signed by the tenant on September 15, 2018, indicating a monthly rent of \$1,095.00, due on the first day of each month for a tenancy commencing on September 15, 2018;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), for \$1,095.00 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;
- 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 2:21pm on January 8, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the applicants to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the applicants 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.

Policy Guideline #39 on Direct Requests provides the following information:

When making an application for dispute resolution through the direct request process, the landlord must provide copies of:

- The written tenancy agreement
- Documents showing changes to the tenancy agreement or tenancy, such as rent increases, or **changes to parties or their agents**
- The Direct Request Worksheet (form RTB-46) setting out the amount of rent or utilities owing which may be accompanied by supporting documents such as a rent ledger or receipt book
- The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (this is often considered proof that the tenant did not pay rent); and
- Proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and, if applicable, the Written Demand to Pay Utilities

I have reviewed all documentary evidence and I find that the landlord's name on the tenancy agreement does not match either of the landlords' names on the Application for Dispute Resolution. However, I find a larger issue with the 10 Day Notice.

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 applicants 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 applicants' application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice served on January 8, 2022, without leave to reapply.

The 10 Day Notice served on January 8, 2022, is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice the applicants' application for a Monetary Order for unpaid rent is dismissed, with leave to reapply.

As the applicants were not successful in this application, I find that the applicants 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 served on January 8, 2022, is dismissed, without leave to reapply.

The 10 Day Notice served on January 8, 2022, is cancelled and of no force or effect.

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

I dismiss the applicants' application for a Monetary Order for unpaid rent, with leave to reapply.

I dismiss the applicants' 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: February 22, 2022

Residential Tenancy Branch