



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 filed by the Landlord for an order of possession and a monetary order for unpaid rent and to recover the filing fee.

The Landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that they served the Tenant with a Notice of Dispute Resolution Proceeding in person on January 25, 2022. Service in this manner was witnessed by K.K. who provided a signature in support. I find these documents were served on and received by the Tenant on January 25, 2022.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the Act?
2. Is the Landlord entitled to a monetary order for unpaid rent pursuant to sections 46 and 67 of the Act?
3. Is the Landlord entitled to recover the filing fee 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 signed by the parties on December 7, 2021, indicating a monthly rent in the amount of \$2,000.00 due on the first day of each month, for a tenancy commencing on December 10, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 3, 2022, for \$2,000.00 in unpaid rent (the 10 Day Notice). 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 January 16, 2022;
- A copy of a signed Proof of Service Notice to End Tenancy document dated January 10, 2022, which indicates that the 10 Day Notice was served on the Tenant on January 3, 2022, by sending it to an email address provided as an address for service;
- A copy of an application to Rent form which included an email address; and
- A copy of a Direct Request Worksheet showing the rent due and paid during the relevant period.

Analysis

In an ex parte Direct Request Proceeding, the onus is on the landlord 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 landlord 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.

Section 88 of the Act and section 43 of the Residential Tenancy Regulation (the Regulation) permit a landlord to serve a notice to end tenancy to an address provided for service by the tenant.

Policy Guideline #39 confirms that a landlord must provide substantive proof of service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on the tenant. It confirms the following is sufficient proof of service by email:

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

RTB 51 – Address for Service or other document that sets out the party's email address for service

In this case, as noted above, the Landlord indicated that the 10 Day Notice was served on the Tenant at an email address provided for service of documents. However, the Landlord did not submit a copy of the outgoing email or documentation confirming the Tenant's email address for service of documents in accordance with Policy Guideline #39. As a result, I find I am not satisfied the Tenant was served with the 10 Day Notice in accordance with the Act, Regulation, and Policy Guideline #39.

Considering the above, I order that the Landlord's request for a monetary order and an order of possession for unpaid rent are dismissed with leave to reapply.

As the Landlord is not successful, I order that the Landlord's request to recover the filing fee is dismissed without leave to reapply.

Conclusion

The Landlord's requests for a monetary order and an order of possession for unpaid rent are dismissed with leave to reapply.

The Landlord's request to recover the filing fee is dismissed 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 7, 2022

Residential Tenancy Branch