



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 landlord 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 landlord on March 11, 2022.

The landlord indicates that on March 17, 2022, they emailed each tenant the Notice of Dispute Resolution Proceeding - Direct Request. The landlord provided a statement that they emailed the Direct Request Proceeding documents to the tenants' email addresses found on the tenancy agreement. The landlord provided a copy of three sent emails with the Direct Request Proceeding documents attached to confirm this service.

Issues to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent 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

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 October 1, 2021, indicating a monthly rent of \$1,200.00, due on the fifteenth day of each month for a tenancy commencing on October 15, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated March 2, 2022, for \$1,200.00 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 March 12, 2022;
- a copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was emailed to tenants on March 2, 2022. The landlord provided a copy of the sent email with the 10 Day Notice attached to confirm this service; and;
- a copy of a Direct Request Worksheet showing the rent owing during the relevant period.

Analysis

In this type of matter, the landlord must prove they served each 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*.

Section 89 of the *Act* provides that a Notice of Dispute Resolution Proceeding - Direct Request may be served “*by any other means of service provided for in the regulations.*”

Section 43(2) of the *Residential Tenancy Regulation* provides that documents “*may be given to a person by emailing a copy to an email address **provided as an address for service by the person.***”

I find that the landlord has sent the Notices of Dispute Resolution Proceeding - Direct Request to the tenants by e-mail.

I note the landlord sent the tenants the Notices of Dispute Resolution Proceeding – Direct Request to the email addresses stated on the tenancy agreement as part of their contact information. However, I find the tenancy agreement does not specify that the tenants agreed to receive documents by e-mail.

I find the landlord has not demonstrated that the tenants' e-mail addresses were provided for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

I find I am not able to confirm service of the Notices of Dispute Resolution Proceeding to the tenants in accordance with section 89 of the *Act* or section 43(2) of the *Regulation*. However, I find there is a more impactful issue with the landlord's application.

The landlord must prove they served the tenants with the 10 Day Notice as per section 88 of the *Act* or section 43(1) of the *Regulations*.

The landlord has indicated they also served the 10 Day Notice to the tenants by e-mail. However, I find there is no evidence to demonstrate that the tenants specifically provided their e-mail addresses for service of documents, as required by section 43(1) of the *Residential Tenancy Regulation*.

For this reason, I find that the 10 Day Notice has not been served in accordance with section 88 of the *Act* or section 43(2) of the *Residential Tenancy Regulation*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated March 2, 2022, without leave to reapply.

The 10 Day Notice dated March 2, 2022, is cancelled and of no force or effect.

For the same reason listed above, I dismiss the landlord's application for a Monetary Order for unpaid rent with leave to reapply.

If the landlord wants to apply through the Direct Request process, the landlord may reissue the 10 Day Notice and serve it in one of the ways prescribed by section 88 of the *Act* or, if reissuing the 10 Day Notice by e-mail, provide sufficient evidence to demonstrate that the e-mail service complies with section 43(1) of the *Regulation*.

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

The landlord's application for an Order of Possession based on the 10 Day Notice dated March 2, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated March 2, 2022, is cancelled and of no force or effect.

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

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

I dismiss the landlord's application to recover the filing fee paid for this application without leave to reapply.

Dated: April 07, 2022

Residential Tenancy Branch