



Dispute Resolution Services

Page: 1

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 12, 2022.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding form which declares that on March 17, 2022, the landlord emailed the tenant the Notice of Dispute Resolution Proceeding - Direct Request. The landlord provided a copy of the sent email with the Direct Request Proceeding documents attached, and a copy of a tenant's information document containing the tenant's email addresses to confirm they served the tenant.

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

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 tenant on January 1, 2021, indicating a monthly rent of \$1,250.00, due on the first day of each month for a tenancy commencing on January 1, 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 \$1,250.00 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 on the stated effective vacancy date of March 15, 2022;
- a copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was emailed to the tenant at 10:30pm on March 2, 2022. The landlord provided a copy of the sent email with the 10 Day Notice attached to confirm this service;
- a copy of a tenant’s information document dated July 20, 2021 which shows the tenant’s email addresses; 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 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*.

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 Notice of Dispute Resolution Proceeding - Direct Request to the tenant by e-mail.

I note the landlord submitted a copy of a document containing the tenant's e-mail address as part of their contact information. However, I find this document does not specify that the tenant agreed to receive documents by e-mail.

I find the landlord has not demonstrated that the tenant's e-mail address was 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 Notice of Dispute Resolution Proceeding to the tenant 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 tenant 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 tenant by e-mail. However, I find there is no evidence to demonstrate that the tenant specifically provided their e-mail address 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