



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-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, 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 applicant on March 23, 2022.

The applicant submitted a witnessed Proof of Service Notice of Direct Request Proceeding form which declares that on March 26, 2022, the applicant served the tenant the Notice of Dispute Resolution Proceeding - Direct Request by posting it to the door of the rental unit.

Based on the written submissions and evidence of the applicant and in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on March 26, 2022 and are deemed to have been received by the tenant on March 29, 2022, the third day after they were posted to the door.

Issues to be Decided

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

Is the applicant 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 applicant submitted the following relevant evidentiary material:

- a copy of a residential tenancy agreement which names a landlord who is not the applicant and was signed by the tenant on May 3, 2020, indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on April 1, 2020;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated March 3, 2022, for \$1,200.00 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 13, 2022;
- 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 10:16am on March 3, 2022;
- a copy of an e-transfer notification email that indicates that the applicant received a payment from the tenant in the amount of \$1,200.00 on March 9, 2022; and;
- a copy of a Direct Request Worksheet showing a payment was received in the amount of \$1,200.00 on March 9, 2022.

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the applicant 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 applicant 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 the landlord's name on the Application for Dispute Resolution. There is also no evidence or documentation showing that the applicant is the owner of the rental property or is otherwise entitled to any orders that may result from this application.

However, I find a more impactful issue with the applicant's application.

Section 46 (4) of the *Act* states that if the tenant pays the overdue rent within five days after receiving the 10 Day Notice, then the notice has no effect.

I find that the 10 Day Notice was served on March 3, 2022 and is deemed to have been received by the tenant on March 6, 2022, three days after it was posted to the door of the rental unit.

The applicant provided a copy of an e-transfer notification email that indicates that the tenant paid the overdue rent of \$1,200.00 on March 9, 2022.

I find that the tenant paid the overdue rent within five days after receiving the 10 Day Notice, and further find that the 10 Day Notice dated March 3, 2022 has no effect.

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 3, 2022, without leave to reapply.

The 10 Day Notice dated March 3, 2022, is cancelled and of no force or effect.

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 applicant's request for an Order of Possession without leave to reapply.

I dismiss the applicant's request 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: April 22, 2022

Residential Tenancy Branch