



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Canada Gong&Meng Ltd
and [tenant name suppressed to protect privacy]

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 April 29, 2022.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on April 29, 2022, the landlord sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by e-mail. The landlord provided a copy of the outgoing e-mail containing the Direct Request documents as attachments confirm this service.

Issue(s) 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 landlord and the tenant on August 14, 2021, indicating a monthly rent of \$6,000.00, due on the first day of each month for a tenancy commencing on September 1, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 14, 2022, for \$6,000.00 in unpaid rent and \$250.00 in unpaid utilities. 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 April 24, 2022
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served to the tenant by e-mail and by WhatsApp at 12:00 pm on April 14, 2022
- A copy of an outgoing e-mail dated April 14, 2022 containing the 10 Day Notice as an attachment
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

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.***”

The landlord submitted a copy of a Form K document which lists an address for service for the landlord and a contact e-mail for the tenant. However, I find this form does not specify that the tenant agreed to send and 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 - Direct Request to the tenant, which is a requirement of the Direct Request process. 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*. Section 88 of the *Act* allows for service by sending the 10 Day Notice to the tenant by mail, by leaving a copy with the tenant, by leaving a copy in the tenant's mailbox or mail slot, by attaching a copy to the tenant's door, by leaving a copy with an adult who apparently resides with the tenant, or by any other means of service provided for in the regulations.

Section 43(1) 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.*"

The landlord has indicated they 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* and Policy Guideline #12.

I find the landlord has failed to demonstrate that e-mail service was in accordance with the *Act* and the *Regulation*.

The landlord has also indicated they sent the 10 Day Notice to the tenant by WhatsApp message, which is not a method of service permitted by the *Act* or *Regulation*.

For these reasons, I find that the 10 Day Notice has not been served in accordance with section 88 of the *Act* or section 43(1) 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 April 14, 2022, without leave to reapply.

The 10 Day Notice dated April 14, 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.

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.

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*.

Conclusion

The landlord's application for an Order of Possession based on the 10 Day Notice dated April 14, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated April 14, 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.

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: May 26, 2022

Residential Tenancy Branch