



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPU-DR, MNU-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 and utilities, to obtain monetary compensation for unpaid rent and utilities, 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 6, 2022.

The landlord submitted a copy of a Proof of Service Notice of Direct Request Proceeding form signed by tenant T.M. which declares that on April 15, 2022, the landlord personally served tenant T.M. the Notice of Dispute Resolution Proceeding - Direct Request.

Based on the written submissions and evidence of the landlord and in accordance with section 89(1) of the *Act*, I find that the Direct Request Proceeding documents were served to tenant T.M. on April 15, 2022.

The landlord submitted a copy of a Proof of Service Notice of Direct Request Proceeding form signed by tenant T.M. which declares that on April 15, 2022, the landlord served tenant A.G. the Notice of Dispute Resolution Proceeding - Direct Request by handing it to tenant T.M.

Based on the written submissions and evidence of the landlord and in accordance with section 89(2) of the *Act*, I find that the Direct Request Proceeding documents were served to tenant A.G. on April 15, 2022.

Issues to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent and utilities 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 tenants on July 1, 2021, indicating a monthly rent of \$1,500.00, due on the first day of each month for a tenancy commencing on July 1, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated March 16, 2022, for \$1,500.00 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 26, 2022;
- a copy of a Proof of Service Notice to End Tenancy form signed by tenant T.M. which indicates that the 10 Day Notice was personally served to tenant T.M. at 11:00am on April 5, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the 10 Day Notice was served to the tenants on April 5, 2022.

Section 46 (4) of the *Act* states that within five days of the tenants receiving the 10 Day Notice, the tenants may either pay the rent or dispute the 10 Day Notice.

I find that the fifth day for the tenants to have either paid the rent or disputed the notice was April 10, 2022. I further find that the earliest date that the landlord could have applied for dispute resolution was April 12, 2022.

I find that the landlord applied for dispute resolution on April 6, 2022, before the last day that the tenants had to dispute the 10 Day Notice and that the landlord made their application for dispute resolution too early.

Therefore, the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated March 16, 2022 is dismissed, with leave to reapply.

For the same reasons identified above, the landlord's application for a Monetary Order for unpaid rent and utilities is dismissed 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.

Conclusion

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice dated March 16, 2022, with leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid rent and utilities 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 13, 2022

Residential Tenancy Branch