



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-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 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 May 30, 2022.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on May 30, 2022, the landlord served Tenant C.J. the Notice of Dispute Resolution Proceeding - Direct Request by attaching the documents to the door of the rental unit. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding form to confirm this service.

Based on the written submissions of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on May 30, 2022 and are deemed to have been received by Tenant C.J. on June 2, 2022, the third day after their posting.

I find the landlord has not submitted a copy of a Proof of Service Notice of Direct Request Proceeding form to establish service of the Notice of Dispute Resolution Proceeding – Direct Request to Tenant M.D. In its place, the landlord submitted a duplicate copy of the Proof of Service Notice of Direct Request Proceeding form discussing service of the Direct Request documents to Tenant C.J.

Issue(s) 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 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, indicating a monthly rent of \$4,490.00, due on the first day of each month for a tenancy commencing on December 1, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 5, 2022, for \$5,784.75 in unpaid rent and \$375.15 in unpaid utilities. 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 “ASAP”
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served to the tenants in person on May 5, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

- In order to be effective, a notice to end a tenancy must be in writing and must*
- (a) be signed and dated by the landlord or tenant giving the notice,*
 - (b) **give the address of the rental unit,***
 - (c) **state the effective date of the notice...and***
 - (e) when given by a landlord, be in the approved form...*

I have reviewed all documentary evidence and I find that there is no effective date (the day when the tenants must move out of or vacate the site) on the 10 Day Notice. Instead of a legal date, the landlord has simply written “ASAP.” It is possible to amend an incorrect date on the 10 Day Notice, but the *Act* does not allow an adjudicator to input a date where none is written.

I also find that the vacate address (the address from which the tenants must move) on the 10 Day Notice is not the rental address. I find the vacate address provided is the

landlord's address. I find the 10 Day Notice requires the tenants to move out of address they do not occupy.

I find that these omissions and errors invalidate the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated May 5, 2022, without leave to reapply.

The 10 Day Notice dated May 5, 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

The landlord's application for an Order of Possession based on the 10 Day Notice dated May 5, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated May 5, 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 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: June 28, 2022

Residential Tenancy Branch