



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 landlords 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 landlords on May 7, 2022.

The landlords submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on May 18, 2022, the landlords served each tenant the Notice of Dispute Resolution Proceeding - Direct Request in person. The landlords had a witness sign the Proof of Service Notice of Direct Request Proceeding forms to confirm personal service.

Based on the written submissions of the landlords and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were duly served to the tenants on May 18, 2022.

Issue(s) to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent and utilities pursuant to section 67 of the *Act*?

Are the landlords 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 landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and Tenant C.G., indicating a monthly rent of \$2,700.00, due on the first day of each month for a tenancy commencing on November 1, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 7, 2022, for \$1,603.68 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 April 17, 2022
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenants by e-mail at 11:02 pm on April 7, 2022
- A copy of an e-mail sent from the landlords to Tenant C.G. dated April 7, 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 landlords must prove they served the tenants 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.*"

Policy Guideline #12 on Service Provisions provides that "*if there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is not advisable to use email as a service method.*"

The landlords have indicated they served the 10 Day Notice to the tenant by e-mail. I note the landlord submitted documents showing previous e-mail conversations with the tenants; however, I find there is no evidence to demonstrate that the tenants 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 landlords have failed to demonstrate that e-mail service was in accordance with the *Act* and the *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(1) of the *Residential Tenancy Regulation*.

Therefore, I dismiss the landlords' application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated April 7, 2022, without leave to reapply.

The 10 Day Notice dated April 7, 2022, is cancelled and of no force or effect.

For the same reason listed above, I dismiss the landlords' application for a Monetary Order for unpaid rent and utilities with leave to reapply.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlords' application for an Order of Possession based on the 10 Day Notice dated April 7, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated April 7, 2022, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlords' application for a Monetary Order for unpaid rent and utilities with leave to reapply.

I dismiss the landlords' 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 14, 2022

Residential Tenancy Branch