



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 landlords 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 landlords on May 11, 2022.

The landlords submitted a copy of a witnessed Proof of Service Notice of Direct Request Proceeding form which declares that on May 24, 2022, the landlords 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 landlords and in accordance with sections 89(2) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on May 24, 2022 and are deemed to have been received by the tenant on May 27, 2022, the third day after they were posted to the door of the rental unit.

Issues to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent 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 landlord E.C. and the tenant on April 29, 2021, indicating a monthly rent of \$1,500.00, due on the first day of each month for a tenancy commencing on May 1, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated March 18, 2022, for \$4,500.00 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 31, 2022;
- a screenshot of an e-mail sent to the tenant which shows that the 10 Day Notice was e-mailed to the tenant on March 18, 2022;
- a copy of a text message reply from the tenant on March 24, 2022 which discusses the tenant making a rent payment; and;
- a copy of a Direct Request Worksheet showing the rent owing during the relevant period.

Analysis

In this type of matter, the landlords 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.

On March 1, 2021, section 43(1) of the *Residential Tenancy Regulation* was updated to provide 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 landlords have indicated that 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*.

I find that 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*.

The landlords provided a copy of a text message reply from the tenant on March 24, 2022 where the tenant indicates that they will make a rent payment. I find that the tenant does not acknowledge receipt of the 10 Day Notice that the landlords e-mailed them on March 18, 2022. I find I cannot accept this text message as proof that the tenant received the 10 Day Notice despite it not being served in accordance with the *Act* and the *Regulation*.

Therefore, I dismiss the landlords’ application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated March 18, 2022, without leave to reapply.

The 10 Day Notice dated March 18, 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 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 March 18, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated March 18, 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 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 17, 2022

Residential Tenancy Branch