



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 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 May 13, 2022.

The landlord submitted a copy of a Proof of Service Notice of Direct Request Proceeding form which declares that on May 30, 2022, the landlord sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm they served the tenant.

Based on the written submissions and evidence of the landlord and in accordance with sections 89(1) 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 the tenant on June 4, 2022, the fifth day after they were mailed.

Issues 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 on February 14, 2022 and the tenant on February 13, 2022, indicating a monthly rent of \$1,900.00, due on the first day of each month for a tenancy commencing on March 1, 2022;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated May 4, 2022, for \$3,800.00 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 May 17, 2022;
- a copy of an unwitnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant’s door at 9:53am on May 4, 2022. The landlord provided a copy of two photographs with the 10 Day Notice posted to a door to confirm this service;
- a copy of a series of three emails exchanged between the landlord and tenant on May 4, 2022;
- a copy of a series of six emails exchanged between the landlord and the tenant where the tenant acknowledges receipt of a 10 Day Notice; and;
- a copy of a Direct Request Worksheet showing the rent owing during the relevant period.

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in a manner that is considered necessary as per sections 71(2)(a) and 88 of

the *Act*. Residential Tenancy Policy Guideline #39 provides the key elements that need to be considered when making an application for Direct Request.

Proof of service of the 10 Day Notice to End Tenancy may take the form of:

- registered mail receipt and printed tracking report;
- a receipt signed by the tenant, stating they took hand delivery of the document(s); or
- **a witness statement that they saw the landlord deliver the document(s).**

The landlord indicates that they served the tenant the 10 Day Notice on May 4, 2022 by posting a copy on the door of the rental unit. On the second page of the Proof of Service Notice to End Tenancy, there is no signature of a witness to confirm service of the 10 Day Notice to the tenant.

I note that the landlord provided a copy of two photographs with the 10 Day Notice posted to a door, however, I find that this proof of service is not in accordance with Policy Guideline # 39.

The landlord submitted a copy of an e-mail from the tenant in response to the landlord advising they will serve a 10 Day Notice. However, I find that the tenant does not acknowledge receipt of the 10 Day Notice in the series of emails dated May 4, 2022.

As the landlord has failed to prove service of the 10 Day Notice to the tenant per section 88 of the *Act* and Policy Guideline # 39, I cannot confirm how and when the 10 Day Notice was served.

The landlord provided a copy of an email from the tenant dated May 13, 2022 where the tenant acknowledges receipt of the 10 Day Notice. In accordance with section 71(2)(c), I find that I can conclude from this email that the tenant received the 10 Day Notice on May 13, 2022.

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

I find that the fifth day for the tenant to have either paid the rent or disputed the notice was May 18, 2022. I further find that the earliest date that the landlord could have applied for dispute resolution was May 19, 2022.

I find that the landlord applied for dispute resolution on May 13, 2022, before the last day that the tenant 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 May 4, 2022 is dismissed, with leave to reapply.

For the same reasons identified above, the landlord's application for a Monetary Order for unpaid rent 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 May 4, 2022, with leave to reapply.

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: June 21, 2022

Residential Tenancy Branch