



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 June 20, 2022.

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on June 17, 2022, the landlords sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by e-mail. The landlords provided a copy of an outgoing e-mail containing attachments to confirm this service.

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 the tenants on February 1, 2022, indicating a monthly rent of \$1,400.00, due on the first day of each month for a tenancy commencing on February 15, 2022
- A copy of two utility bills from BC Hydro for the rental unit dated April 13, 2022, for \$167.72 and May 13, 2022, for \$173.84
- A copy of two utility bills from Fortis for the rental unit dated April 14, 2022, for \$174.39 and May 16, 2022, for \$147.83
- A copy of two e-mail demand letters from the landlords to the tenant requesting payment of utilities, dated May 26, 2022, for \$102.60 and June 6, 2022, for \$96.49
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 6, 2022, for \$1,400.00 in unpaid rent and \$199.00 in unpaid utilities. 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 June 16, 2022
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by e-mail at 9:30 pm on June 17, 2022
- A copy of an e-mail from the landlords to the tenant dated June 6, 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 tenant with the Notice of Dispute Resolution Proceeding – Direct Request and all documents in support of the application in accordance with section 89 of the *Act*.

Section 89 of the *Act* provides that a Notice of Dispute Resolution Proceeding - Direct Request may be served “*by any other means of service provided for in the regulations.*”

Section 43(2) 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.***”

The landlords state they have sent the Notice of Dispute Resolution Proceeding - Direct Request to the tenant by e-mail. However, I find there is no evidence to demonstrate that the tenant indicated documents could be served by e-mail.

I find the landlords have not demonstrated that the tenant's e-mail address was provided for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

Furthermore, the Proof of Service Notice of Direct Request Proceeding states the Direct Request documents were e-mailed on June 17, 2022. However, I find that the landlords did not apply for dispute resolution until June 20, 2022, and the Notice of Dispute Resolution Proceeding – Direct Request was not made available for service until July 7, 2022.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the tenant, which is a requirement of the Direct Request process. However, I find there is a more impactful issue with the landlords' application.

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* or section 43(1) of the *Regulation*.

The landlords state they e-mailed the 10 Day Notice to the tenant. 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 the landlords have failed to demonstrate that e-mail service was in accordance with the legislation. 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 June 6, 2022, without leave to reapply.

The 10 Day Notice dated June 6, 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.

The landlords may reissue the 10 Day Notice and serve it in one of the ways prescribed by section 88 of the *Act* or, if reissuing the 10 Day Notice by e-mail, provide sufficient evidence to demonstrate that the e-mail service complies with section 43(1) of the *Regulation*.

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 June 6, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated June 6, 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: July 27, 2022

Residential Tenancy Branch