



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 30, 2022.

Notice of Dispute Resolution Proceeding – Direct Request

In this type of matter, the landlord must prove they served the tenants 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*. Policy Guideline #39 on Direct Requests provides the following requirements:

“After the Notice of Dispute Resolution Proceeding Package has been served to the tenant(s), the landlord must complete and submit to the Residential Tenancy Branch a Proof of Service Notice of Direct Request Proceeding (form RTB-44) for each tenant served.”

I note the landlord did not submit copies of the Proof of Service Notice of Direct Request Proceeding forms, which are a requirement of the Direct Request Process. However, the landlord did submit two letters detailing service to the tenants. I find these letters contain the relevant information that would have appeared in the Proof of Service forms. For this reason, I accept the letters in place of the RTB-44 forms.

The landlord submitted a letter which declares that on June 24, 2022, the landlord sent Tenant M.E. 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 this mailing.

Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on

June 24, 2022 and are deemed to have been received by Tenant M.E. on June 29, 2022, the fifth day after their registered mailing.

The landlord also submitted a letter which declares that on June 2, 2022, the landlord sent Tenant S.P. the Notice of Dispute Resolution Proceeding - Direct Request by e-mail. The landlord provided a copy of the outgoing e-mail containing the Direct Request documents as attachments to confirm this service. The landlord also submitted a copy of a reply e-mail from Tenant S.P. dated June 2, 2022.

Section 71(2)(c) of the *Act* enables me to make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

I find that the landlord sent the Direct Request documents to Tenant S.P. by e-mail, which is not a method of service permitted under section 89 of the *Act*. However, I am satisfied that Tenant S.P. received the documents on the day Tenant S.P. replied to the landlord's e-mail.

For this reason, and in accordance with section 71(2)(c) of the *Act*, I find that Tenant S.P. has been served with the Notice of Dispute Resolution Proceeding – Direct Request on June 2, 2022.

Issue(s) 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 and Tenant M.E. on July 3, 2016, indicating a monthly rent of \$800.00, due on the first day of each month for a tenancy commencing on July 15, 2016
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 1, 2022, for \$1,000.00 in unpaid rent and additional business space

charges. 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 May 11, 2022

- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was handed to Tenant S.P., an adult living in the rental unit, at 8:00 pm on May 1, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

*“A landlord may end a tenancy if rent is unpaid on any day **after** the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.”*

I find that the tenancy agreement indicates that the monthly rent is due on the first of every month. I further find that the landlord has issued the 10 Day Notice on May 1, 2022, the same day that the monthly rent was due for May 2022, which is not in accordance with section 46 of the *Act*.

I find that the landlord has not complied with the provisions of section 46 of the *Act*, regarding the 10 Day Notice issued to the tenants.

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 1, 2022, without leave to reapply.

The 10 Day Notice dated May 1, 2022, is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, I dismiss the landlord’s application for a Monetary Order for unpaid rent 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

The landlord's application for an Order of Possession based on the 10 Day Notice dated May 1, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated May 1, 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 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: July 20, 2022

Residential Tenancy Branch