



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR**

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.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlord on July 13, 2022.

The landlord submitted a copy of two Proof of Service Notice of Direct Request Proceeding forms which declare that on July 28, 2022, the landlord sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of two Canada Post Customer Receipts containing the tracking numbers to confirm they served the tenants.

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 July 28, 2022 and are deemed to have been received by the tenants on August 2, 2022, the fifth day after they were mailed.

Issue to be Decided

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

Background and Evidence

The landlord submitted the following relevant evidentiary material:

- a copy of a residential tenancy agreement which was signed by the landlord on November 30, 2019 and the tenants on November 8, 2019, indicating a monthly rent of \$2,150.00, due on the first day of each month for a tenancy commencing on December 1, 2019;

- a copy of one Notice of Rent Increase form showing the rent being increased from \$2,150.00 to the monthly rent amount of \$2,182.00;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated July 2, 2022, for \$2,182.00 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 July 16, 2022;
- a copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was emailed to tenant L.C. at 10:17am on July 2, 2022. The landlord provided a copy of the email sent to the tenant with the 10 Day Notice attached to confirm this service; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

In this type of matter, the landlord 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 tenants by mail, by leaving a copy with the tenants, by leaving a copy in the tenants’ mailbox or mail slot, by attaching a copy to the tenants’ door, by leaving a copy with an adult who apparently resides with the tenants, 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.***”

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 landlord has indicated they served the 10 Day Notice to tenant L.C. by e-mail. However, I find there is no evidence to demonstrate that tenant L.C, 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 landlord has 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 landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated July 2, 2022, without leave to reapply.

The 10 Day Notice dated July 2, 2022, is cancelled and of no force or effect.

If the landlord wants to apply through the Direct Request process, the landlord 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*.

Conclusion

The landlord's application for an Order of Possession based on the 10 Day Notice dated July 2, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated July 2, 2022, is cancelled and of no force or effect.

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

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: August 24, 2022

Residential Tenancy Branch