



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-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 landlords to obtain an Order of Possession based on unpaid rent and to obtain monetary compensation for unpaid rent.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlords on July 19, 2022.

The landlords submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on August 7, 2022, the landlords sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm these mailings.

Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on August 7, 2022 and are deemed to have been received by the tenants on August 12, 2022, the fifth day after their registered mailing.

Issue(s) 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*?

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 May 16, 2022, indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on June 1, 2022
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 5, 2022, for \$2,500.00 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 18, 2022
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenants by e-mail at 10:51 pm on July 8, 2022
- A copy of several e-mails exchanged between the landlords and the tenants, including an e-mail dated July 8, 2022, indicating a 10 Day Notice was attached
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that \$1,125.00 of the \$2,500.00 identified as owing in the 10 Day Notice was paid on July 16, 2022

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the landlords 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 landlords 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 landlords 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 tenant by any other means of service provided for in the regulations.

Section 43(1) 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.*”

Policy Guideline #39 provides that service of the 10 Day Notice by e-mail may be proven by providing:

- A copy of the outgoing email showing the email address used, the date the email was sent, and any attachments included in the email and

- The RTB-51 - Address for Service or other document that sets out the party's email address for service

The landlords have indicated they served the 10 Day Notice to the tenants by e-mail. The landlords submitted a copy of an e-mail dated July 8, 2022, stating that a 10 Day Notice was included. However, I find the attachment does not appear on the copy of the e-mail provided.

Furthermore, 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.*”

I note the landlords submitted evidence demonstrating that the landlords and the tenants have communicated through e-mail in the past. However, I find there is no evidence to demonstrate that the tenants agreed to receive documents by e-mail.

I find the landlords have not sufficiently demonstrated that the tenants' e-mail address was specifically provided for service of documents, as required by section 43(1) of the *Residential Tenancy Regulation* and Policy Guideline #12.

I find 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*.

Therefore, I dismiss the landlords' application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated July 5, 2022, without leave to reapply.

The 10 Day Notice dated July 5, 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.

If the landlords want to apply through the Direct Request process, 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*.

Conclusion

The landlords' application for an Order of Possession based on the 10 Day Notice dated July 5, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated July 5, 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.

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 31, 2022

Residential Tenancy Branch