



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KIC Asset Management Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-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 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 July 21, 2022.

The landlord submitted a copy of a Canada Post Customer Receipt containing a tracking number to confirm a package was sent by registered mail on August 9, 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 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 tenant on October 12, 2019, indicating a monthly rent of \$1,000.00, due on the first day of each month for a tenancy commencing on November 1, 2019
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 5, 2022, for \$1,000.00 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 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 tenant by e-mail at 7:13 am on July 5, 2022
- A copy of an e-mail sent to the tenant on July 5, 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 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 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*. 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 that the landlord submitted a copy of a Canada Post Customer Receipt containing a tracking number to confirm a package was sent on August 9, 2022. However, I find the landlord has not provided a copy of the Proof of Service Notice of Direct Request Proceeding form which is a requirement of the Direct Request process as detailed in Policy Guideline #39.

I find the landlord has not submitted the documents required to confirm service of the Notice of Dispute Resolution Proceeding – Direct Request to the tenant. However, I also find there are more impactful issues with the landlord's application.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*
(a) be signed and dated by the landlord or tenant giving the notice,
(b) give the address of the rental unit,
(c) state the effective date of the notice...and
(e) when given by a landlord, be in the approved form...

I find that the 10 Day Notice is not signed by the landlord. I find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*.

Furthermore, the landlord must prove they served the tenant with the 10 Day Notice as per section 88 of the *Act*. Section 88 of the *Act* allows for service 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.*”

The tenancy agreement addendum indicates that documents can be sent by e-mail. However, I find the addendum was signed in 2019, before section 43(1) of the Regulation came into effect.

I find the tenant cannot have agreed to e-mail served in compliance with legislation that did not yet exist.

For these reasons, I dismiss the landlord's 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.

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 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 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: September 06, 2022

Residential Tenancy Branch