



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gaviota Holdings Ltd dba Country Squire
Apt 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 August 16, 2022.

The landlord submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on August 17, 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 the Canada Post Customer Receipts containing the tracking numbers to confirm these mailings.

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 August 17, 2022 and are deemed to have been received by the tenants on August 22, 2022, the fifth day after their registered mailing.

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 landlord and the tenants on July 23, 2020, indicating a monthly rent of \$1,700.00, due on the first day of each month for a tenancy commencing on September 1, 2020
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 2, 2022, for \$1,725.00 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 12, 2022
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 3:00 pm on July 2, 2022
- A Direct Request Worksheet and ledger showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that \$1,725.00 of the \$1,725.00 identified as owing in the 10 Day Notice was paid on July 5, 2022

Analysis

Section 46(4) of the *Act* states that within five days of a tenant receiving the 10 Day Notice, the tenant may pay the overdue rent, in which case, the notice has no effect.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on July 2, 2022 and is deemed to have been received by the tenants on July 5, 2022, three days after its posting.

The landlord states that the tenants paid the full rent listed on the 10 Day Notice on July 5, 2022, within the five days granted under section 46(4) of the *Act*. For this reason, I find the 10 Day Notice is cancelled and of no force or effect.

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.

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 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*.

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 12, 2022

Residential Tenancy Branch