



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPU-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 utilities.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlord on September 8, 2022.

The landlord submitted a copy of a Proof of Service Notice of Direct Request Proceeding form which declares that on September 22, 2022, the landlord sent the 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 Receipt containing the tracking number to confirm they served the tenant.

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 September 22, 2022 and are deemed to have been received by the tenant on September 27, 2022, the fifth day after they were mailed.

Issue to be Decided

Is the landlord entitled to an Order of Possession for unpaid utilities pursuant to sections 46 and 55 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 tenant on August 29, 2020, indicating a monthly rent of \$2,700.00, due on the first day of each month for a tenancy commencing on August 30, 2020;
- a copy of one Notice of Rent Increase form showing the rent being increased from \$2,700.00 to the monthly rent amount of \$2,740.50;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated August 4, 2022, for \$2,740.50 in unpaid rent and \$413.57 in unpaid utilities. 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 August 14, 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 tenant’s door at 6:44pm on August 4, 2022; and;
- a copy of a Direct Request Worksheet showing the rent and utilities owing and paid during the relevant period.

Analysis

Section 46(4) of the Act states that if the tenant pays the overdue rent within five days of receiving the 10 Day Notice, 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 August 4, 2022 and is deemed to have been received by the tenant on August 7, 2022, three days after it was posted to the door of the rental unit.

I find that the tenant paid the overdue rent on August 5, 2022, which was within five days of receiving the 10 Day Notice and subsequently find that the portion of the 10 Day Notice for the non- payment of rent has no effect.

Section 46(6) of the Act allows a landlord to treat unpaid utilities as unpaid rent and issue a notice to end tenancy if

(a) a tenancy agreement requires the tenant to pay utility charges **to the landlord**, and
(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

I note the tenancy agreement states that electricity and heat are not included in the rent. However, I find that the tenancy agreement does not specifically state that the tenant is to pay the utilities to the landlord.

Therefore, I find the landlord did not have the authority under section 46(6) to issue a 10 Day Notice for unpaid utilities.

For this reason, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession for unpaid utilities based on the 10 Day Notice dated August 4, 2022, without leave to reapply.

The 10 Day Notice dated August 4, 2022, is cancelled and of no force or effect.

Conclusion

The landlord's application for an Order of Possession based on the 10 Day Notice dated August 4, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated August 4, 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: October 24, 2022

Residential Tenancy Branch