

DECISION

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 the landlord's Application for Dispute Resolution (Application) for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55
- a Monetary Order for unpaid rent pursuant to section 67 (\$1,594.00)

Service of Notice of Dispute Resolution Proceeding - Direct Request

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that the tenant was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in accordance with section 89 of the Act. The landlord had the tenant sign the Proof of Service Notice of Direct Request Proceeding to confirm this service. Based on the written submissions of the landlord:

- I find that Tenant N.R. was served on September 24, 2022, in person.

Issue(s) to be decided

Is the landlord entitled to an Order of Possession based on unpaid rent?

Is the landlord entitled to a Monetary Order for unpaid rent? (\$1,594.00)

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 evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on January 19, 2017, indicating a current monthly rent of \$1,100.00, due on the last day of the month for a tenancy commencing on February 1, 2017;
- A copy of four Notice of Rent Increase forms showing the rent being increased from \$1,100.00 to the monthly rent amount of \$1,222.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 2, 2022, for \$1,594.00 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 September 12, 2022;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served to the tenant in person at 10:00 am on September 2, 2022; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

Is the landlord entitled to an Order of Possession based on unpaid rent?

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 have reviewed all documentary evidence and I find that the 10 Day Notice is not signed by the landlord. I further find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated September 2, 2022, without leave to reapply.

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

Is the landlord entitled to a Monetary Order for unpaid rent?

Section 26 of the Act requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

In a Direct Request, a landlord is only entitled to monetary compensation related to a valid 10 Day Notice issued to the tenant. As the 10 Day Notice has been cancelled, I find that I cannot proceed with the landlord's request for unpaid rent.

For this reason, the landlord's application for a Monetary Order for unpaid rent is dismissed, with leave to reapply.

Conclusion

The landlord's Application for an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the Act, and based on the 10 Day Notice dated September 2, 2022, is dismissed without leave to reapply. This tenancy will continue until ended in accordance with the Act.

The landlord's Application for a Monetary Order for unpaid rent pursuant to section 67 of the Act is dismissed, 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: October 31, 2022

Residential Tenancy Branch