

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 of the Act

Issue(s) to be decided

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

Service of Notice of Dispute Resolution Proceeding - Direct Request

The landlord submitted a signed Proof of Service Landlord's 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 73(2) of the *Residential Tenancy Regulation*. The landlord submitted a copy of an outgoing e-mail containing the Direct Request documents as attachments to confirm this service. The landlord also submitted a copy of a text message from the tenant dated June 28, 2020, indicating the tenant sent the landlord the signed tenancy agreement by e-mail. Based on the written submissions of the landlord:

- I find that the Notice of Dispute Resolution Proceeding was not served in accordance with 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 evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord on August 1, 2019, and the tenant on August 9, 2019, indicating a monthly rent of

\$2,000.00, due on the 5th day of the month for a tenancy commencing on August 1, 2019;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 10, 2022, for \$2,000.00 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 August 20, 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 2:45 pm on August 10, 2022;
- A copy of an e-mail sent from the landlord to the tenant on August 10, 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

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

In this type of matter, the landlord must prove they served the tenant with the Notice of Dispute Resolution Proceeding – Direct Request and supporting documents in accordance with section 89 of the Act. The landlord must also prove they served the 10 Day Notice as per section 88 of the Act.

Sections 88 and 89 of the Act allow for service to the tenant by any other means of service provided for in the regulations.

On March 1, 2021, sections 43(1) and 43(2) of the *Residential Tenancy Regulation* were 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.*”

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 landlord has indicated they served the 10 Day Notice and the Proceeding Package to the tenant by e-mail. The landlord submitted a copy of a text message from the tenant indicating the tenant sent the signed tenancy agreement to the landlord by e-mail.

This text message is dated June 28, 2020, over eight months before the Regulation allowed for e-mail service. I find the tenant cannot have agreed to use a method of service in accordance with legislation that did not yet exist.

I also note that the e-mails provided by the landlord containing the 10 Day Notice and the Proceeding Package as attachment do not show what e-mail address was used to send the documents.

I find the landlord has failed to demonstrate that e-mail service was in accordance with the Act and the Regulation.

For this reason, I find the Notice of Dispute Resolution Proceeding – Direct Request has not been served in accordance with the Act or the Regulation. I also 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 landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated August 10, 2022, without leave to reapply.

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

If the landlord wants to apply through the Direct Request process, the landlord 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 landlord's Application for an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the Act, based on the 10 Day Notice dated August 10, 2022, is dismissed, without leave to reapply. This tenancy will continue until 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 31, 2022

Residential Tenancy Branch