

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
- a Monetary Order for unpaid rent pursuant to section 67 of the Act (\$3,450.00)
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act (\$100.00)

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 43 of the *Residential Tenancy Regulation* (the "Regulation").

The landlord provided a copy of the outgoing e-mail containing the Proceeding Package documents as attachments to confirm this service. The landlord also provided a copy of an Address for Service form which was signed by the tenant on June 20, 2022, demonstrating that the tenant agreed to receive documents by e-mail.

Based on the written submissions of the landlord and in accordance with section 44 of the Regulation, I find that Tenant C.I. was served on October 5, 2022, by pre-agreed e-mail and is deemed to have received the Proceeding Package on October 8, 2022, three days after it's e-mailing.

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? (\$3,450.00)

Is the landlord entitled to recover the filing fee for this application from the tenant? (\$100.00)

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 December 26, 2021, indicating a monthly rent of \$1,850.00, due on the first day of the month for a tenancy commencing on January 1, 2022;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 4, 2022, for \$3,450.00 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 14, 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 9:01 am on August 14, 2022;
- A Direct Request Worksheet.

Analysis

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in a manner that is considered necessary as per sections 71(2)(a) and 88 of the Act.

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 that they sent the 10 Day Notice to the tenant by e-mail. However, I find the landlord has not provided a copy of the outgoing e-mail containing

the 10 Day Notice as an attachment to confirm service of the 10 Day Notice to the tenant.

I also note that the 10 Day Notice is dated September 4, 2022; however, the Proof of Service Notice to End Tenancy form indicates the 10 Day Notice was sent by e-mail on August 14, 2022, before the 10 Day Notice was issued.

I find I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request Proceeding.

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

As the landlord was not successful in this application, the landlord's application for authorization to recover the filing fee for this application is dismissed, without leave to reapply.

Conclusion

The landlord's application for an Order of Possession based on unpaid rent, pursuant to sections 46 and 55 of the Act, is dismissed with leave to reapply.

The landlord's application for a Monetary Order for unpaid rent, pursuant to section 67 of the Act, is dismissed with leave to reapply.

The landlord's application for authorization to recover the filing fee for this application from the tenant, pursuant to section 72 of the Act, is dismissed 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: November 8, 2022

Residential Tenancy Branch