

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 (\$1,958.00)
- 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 copy of a Proof of Service Notice of Direct Request Proceeding form signed by the tenant which declares that on September 29, 2022 the tenant was personally served the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in accordance with section 89(1) of the Act. Based on the written submissions and evidence of the landlord:

- I find that tenant S.N. was served the Notice of Dispute Resolution Proceeding - Direct Request on September 29, 2022.

Issues 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? (\$1,958.00)

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 June 25, 2021, indicating a monthly rent of \$1,895.00, due on the first day of the month for a tenancy commencing on July 1, 2021;
- a copy of one Notice of Rent Increase form showing the rent being increased from \$1,895.00 to the monthly rent amount of \$1,923.00;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated August 4, 2022, for \$1,961.00 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 17, 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 by leaving a copy in the tenant's mailbox or mail slot at 10:05am on September 2, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing during the relevant period.

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

Section 59 of the *Act* establishes that an Application for Dispute Resolution must “include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings.”

Policy Guideline #39 on Direct Requests provides the following information:

When making an application for dispute resolution through the direct request process, the landlord must provide copies of:

- The written tenancy agreement.
- Documents showing changes to the tenancy agreement or tenancy, such as rent increases, or changes to parties or their agents.
- The Direct Request Worksheet (form RTB-46) setting out the amount of rent or utilities owing which may be accompanied by supporting documents such as a rent ledger or receipt book;
- **The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities** (this is often considered proof that the tenant did not pay rent).

- Proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and, if applicable, the Written Demand to Pay Utilities.

I find that the landlord is requesting for an Order of Possession and a Monetary Order based on a 10 Day Notice issued on September 2, 2022, however, I find that they have not submitted a copy of the September 10 Day Notice. In its place, the landlord has submitted a 10 Day Notice dated August 4, 2022.

I find that I am not able to consider the landlord's Application for Dispute Resolution without this document which forms a part of the Application, and for this reason, the landlord's application for an Order of Possession and a Monetary Order is dismissed with leave to reapply.

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

I dismiss the landlord's application for an Order of Possession for unpaid rent with leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid rent with leave to reapply.

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: November 1, 2022

Residential Tenancy Branch