

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 (\$4,250.00)
- 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 89(2) of the Act. The landlord had a witness sign the Proof of Service Landlord's Notice of Direct Request Proceeding form to confirm this service. Based on the written submissions of the landlord and in accordance with section 90 of the Act:

- I find that Tenant A.F. was served with the Proceeding Package on October 21, 2022, and deemed to have received the documents on October 24, 2022, three days after they were posted to the door of the rental unit.

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? (\$4,250.00)

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 May 5, 2022, indicating a monthly rent of \$2,350.00, due on the first day of the month for a tenancy commencing on May 1, 2022;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 4, 2022, for \$4,250.00 in unpaid rent and \$126.44 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 October 17, 2022;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that a 10 Day Notice was posted to the tenant's door at 1:00 pm on September 27, 2022;
- A Direct Request Worksheet and ledger 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 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy pursuant to section 46(5) of the Act.

The landlord states they served the tenant a 10 Day Notice on September 27, 2022. However, I find the copy of the 10 Day Notice is dated October 4, 2022, a week later.

I find I am not able to determine whether the landlord served a September 10 Day Notice and did not submit a copy into evidence or if the landlord served an October 10 Day Notice and included the wrong service dates on the Proof of Service Notice to End Tenancy form.

For this reason, I find I cannot proceed with the landlord's request for an Order of Possession. The landlord's application for an Order of Possession based on unpaid rent is dismissed, with leave to reapply.

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

In a Direct Request Proceeding, the landlord is only entitled to financial compensation directly related to a valid 10 Day Notice and a successful Order of Possession request. I note the purpose of a Direct Request is primarily to obtain an Order of Possession and not to obtain a faster resolution to a purely monetary claim.

As the landlord was not successful in obtaining an Order of Possession for unpaid rent, I find I cannot award compensation for unpaid rent.

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

Is the landlord entitled to recover the filing fee for this application from the tenant?

As the landlord was not successful in this application, I find the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

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 28, 2022

Residential Tenancy Branch