

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
- 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 which declares that on October 25, 2022 they sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the tracking number, a copy of a photograph of the post stamped envelope addressed to the tenant, and a copy of the Canada Post signature page showing that the tenant received the Proceeding Package on October 26, 2022. In accordance with section 89(1) of the Act and based on the written submissions and evidence of the landlord:

- I find that tenant C.P. was served the Proceeding Package on October 26, 2022.

Issues to be decided

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

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

Background and Evidence

The landlord submitted the following evidentiary material:

- a copy of a residential tenancy agreement which was signed by the landlord on November 2, 2020 and the tenant on November 19, 2020, indicating a monthly rent of \$2,000.00, due on the first day of the month for a tenancy commencing on November 27, 2020;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated October 1, 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 October 16, 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 registered mail at 3:38pm on October 1, 2022. The landlord provided a copy of the Canada Post Customer Receipt containing the tracking number, a copy of a picture of the post stamped envelope addressed to the tenant, and a copy of the tracking report to confirm this service; and;
- a copy of a Direct Request Worksheet showing the rent owing during the relevant period.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

*“A landlord may end a tenancy if rent is unpaid on any day **after** the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.”*

I find that the tenancy agreement indicates that the monthly rent is due on the first of every month. I further find that the landlord has issued the 10 Day Notice on October 1, 2022, the same day that the monthly rent was due for October 2022, which is not in accordance with section 46 of the *Act*.

I find that the landlord has not complied with the provisions of section 46 of the *Act*, regarding the 10 Day Notice issued to the tenant.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated October 1, 2022, without leave to reapply.

The 10 Day Notice dated October 1, 2022, is cancelled and of no force or effect.

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

The landlord's application for an Order of Possession based on the 10 Day Notice dated October 1, 2022 is dismissed, without leave to reapply.

The 10 Day Notice dated October 1, 2022, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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 29, 2022

Residential Tenancy Branch