

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 applicant'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 (\$1,093.25)
- 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 applicant submitted a copy of a witnessed Proof of Service Notice of Direct Request Proceeding form which declares that on September 29, 2022, they served the tenant the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) by posting it to the door of the rental unit. In accordance with sections 89(2) and 90 of the Act and based on the written submissions of the landlord:

- I find that tenant K.P. was served the Proceeding Package on September 29, 2022 and is deemed to have received it on October 2, 2022, three days after it was posted to the door of the rental unit.

Issues to be decided

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

Is the applicant entitled to a Monetary Order for unpaid rent? (\$1,093.25)

Is the applicant 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 applicant submitted the following evidentiary material:

- a copy of a residential tenancy agreement which was names a landlord who is not the applicant and signed by the tenant on July 30, 2021, indicating a monthly rent of \$1,275.00 due on the first day of the month for a tenancy commencing on August 1, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated September 3, 2022 for \$1,293.25 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 13, 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 on September 3, 2022 at 2:48pm. The applicant provided a copy of the e-mail sent to the tenant with the 10 Day Notice attached to confirm this service; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the applicant 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 applicant 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.

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
- The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities
- 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 have reviewed all documentary evidence and I find that the landlord’s name on the tenancy agreement does not match the landlord’s name on the Application for Dispute Resolution. There is also no evidence or documentation showing that the applicant is

the owner of the rental property or is otherwise entitled to any orders that may result from this application; however, I find a larger issue with the service of the 10 Day Notice.

In this type of matter, the applicant must prove they served the tenant with the 10 Day Notice as per section 88 of the *Act*. Section 88 of the *Act* allows for service by sending the 10 Day Notice to the tenant by mail, by leaving a copy with the tenant, by leaving a copy in the tenant's mailbox or mail slot, by attaching a copy to the tenant's door, by leaving a copy with an adult who apparently resides with the tenant, or by any other means of service provided for in the regulations.

On March 1, 2021, section 43(1) of the *Residential Tenancy Regulation* was 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 #12 on Service Provisions provides that "*if there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is not advisable to use email as a service method.*"

The applicant has indicated they served the 10 Day Notice to the tenant by e-mail. However, I find there is no evidence to demonstrate that the tenant specifically provided their e-mail address for service of documents, as required by section 43(1) of the *Residential Tenancy Regulation* and Policy Guideline #12.

I find the applicant has failed to demonstrate that e-mail service was in accordance with the *Act* and the *Regulation*. For this reason, I 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 applicant's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated September 3, 2022, without leave to reapply.

The 10 Day Notice dated September 3, 2022, is cancelled and of no force or effect.

For the same reason listed above, I dismiss the applicant's application for a Monetary Order for unpaid rent with leave to reapply.

If the applicant wants to apply through the Direct Request process, the applicant 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*.

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

Conclusion

The applicant's application for an Order of Possession based on the 10 Day Notice dated September 3, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated September 3, 2022, is cancelled and of no force or effect.

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

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

I dismiss the applicant'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 2, 2022

Residential Tenancy Branch