

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 (\$30,350.00)
- authorization to recover the filing fee for this application from the tenants pursuant to section 72 of the Act (\$100.00)

Service of Notice of Dispute Resolution Proceeding - Direct Request

The landlord submitted a copy of two Proof of Service Notice of Direct Request Proceeding forms which declare that on October 7, 2022 they sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) by registered mail to the rental unit. The landlord provided a copy of two Canada Post Customer Receipts containing the tracking numbers to confirm this service. In accordance with sections 89(1) and 90 of the Act and based on the written submissions and evidence of the landlord:

- I find that on October 7, 2022 the landlord sent the Proceeding Packages to the tenants by registered mail, and they are deemed to have been received by the tenants on October 12, 2022, the fifth day after they were mailed.

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? (\$30,350.00)

Is the landlord entitled to recover the filing fee for this application from the tenants?
(\$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 an unsigned residential tenancy agreement, indicating a monthly rent of \$3,450.00, due on the first day of the month for a tenancy commencing on April 1, 2017;
- a copy of an unsigned 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated September 12, 2022, for \$30,350.00 in unpaid rent. The 10 Day Notice provides that the tenants 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 23, 2022;
- a copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenants by registered mail on September 12, 2022. The landlord provided a copy of a picture of the post stamped envelope with the Canada Post tracking label containing the tracking number to confirm this service; and;
- a copy of a Direct Request Worksheet with an attached rental unit ledger showing the rent owing and paid 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 12(1)(b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to “be signed and dated by both the landlord and the tenant.”

I find that the residential tenancy agreement submitted by the landlord is not signed by the tenants, which is a requirement of the Direct Request process, however, I find a more impactful issue with the 10 Day Notice.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*
*(a) **be signed** and dated by the landlord or tenant giving the notice,*
(b) give the address of the rental unit,
(c) state the effective date of the notice...and
(e) when given by a landlord, be in the approved form...

I have reviewed all documentary evidence and I find that the 10 Day Notice is not signed by the landlord. I further find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated September 12, 2022, without leave to reapply.

The 10 Day Notice dated September 12, 2022 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, the landlord's application for a Monetary Order for unpaid rent 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

The landlord's application for an Order of Possession based on the 10 Day Notice dated September 12, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated September 12, 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 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 10, 2022

Residential Tenancy Branch