

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 landlords' Application for Dispute Resolution (Application) for:

- an Order of Possession for unpaid rent and/or utilities pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent and/or utilities pursuant to section 67 of the Act (\$1,250.00)
- 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 landlords 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 of the Act. The landlords 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 landlords and in accordance with section 90 of the Act:

- I find that Tenant J.M. was served on September 29, 2022, by posting to the door of the rental unit, and is deemed to have received the Proceeding Package on October 2, 2022, the third day after its posting.

Issue(s) to be decided

Are the landlords entitled to an Order of Possession based on unpaid rent and/or utilities?

Are the landlords entitled to a Monetary Order for unpaid rent and/or utilities?
(\$1,250.00)

Are the landlords 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 landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by one of the landlords and the tenant on November 24, 2012, indicating a monthly rent of \$800.00, due on the first day of the month for a tenancy commencing on November 24, 2012;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$950.00 to the monthly rent amount of \$1,000.00
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the August 10 Day Notice) dated August 1, 2022, for \$1,000.00 in unpaid rent and \$50.00 in unpaid utilities. The August 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 11, 2022;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the August 10 Day Notice was served to the tenant in person at 4:00 pm on August 1, 2022;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the September 10 Day Notice) dated September 1, 2022, for \$1,000.00 in unpaid rent and \$50.00 in unpaid utilities. The September 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 11, 2022;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the September 10 Day Notice was served to the tenant in person at 5:32 pm on September 1, 2022;
- A copy of a demand letter from the landlords to the tenant, dated September 11, 2022, requesting payment of rent and utilities in the amount of \$1,250.00
- A copy of a witnessed Proof of Service Written Demand to Pay for Utilities form which indicates that the demand letter was served to the tenant in person on September 11, 2022;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

Are the landlords entitled to an Order of Possession based on unpaid rent and/or utilities?

Section 46(6) of the Act allows the landlord to issue a notice to end tenancy for unpaid utilities, 30 days after the tenant is given a written demand for them.

I find that the demand letter was served to the tenant on September 11, 2022, ten days after the September 10 Day Notice, and over a month after the August 10 Day Notice. I find that the landlords did not provide the 30 days required under section 46(6) of the Act to allow the landlords to include the unpaid utilities on the 10 Day Notice.

For this reason, the portions of the August 10 Day Notice and the September 10 Day Notice related to unpaid utilities are dismissed without leave to reapply.

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 landlords have issued the 10 Day Notices on August 1, 2022, and on September 1, 2022, the same days the monthly rent was due for August 2022 and September 2022, which is not in accordance with section 46 of the Act.

I find that the landlords have not complied with the provisions of section 46 of the Act, regarding the 10 Day Notices issued to the tenant.

Therefore, I dismiss the landlords’ application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated August 1, 2022, and the 10 Day Notice dated September 1, 2022, without leave to reapply.

The 10 Day Notices dated August 1, 2022, and September 1, 2022, are cancelled and of no force or effect.

Are the landlords entitled to a Monetary Order for unpaid rent and/or utilities?

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 purely monetary claim.

As the landlords were not successful in obtaining an Order of Possession for unpaid rent, I find I cannot award compensation for unpaid rent and/or utilities.

Are the landlords entitled to recover the filing fee for this application from the tenant?

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlords' application for an Order of Possession based on the 10 Day Notices dated August 1, 2022, and September 1, 2022, is dismissed, without leave to reapply.

The 10 Day Notices dated August 1, 2022, and September 1, 2022, are cancelled and of no force or effect.

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

I dismiss the landlords' application for a Monetary Order for unpaid rent and utilities with leave to reapply.

I dismiss the landlords' 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