

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

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) by attaching the Proceeding Package to the door of the rental unit. 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 sections 89(2) and 90 of the Act, I find that Tenant A.D. was served on November 8, 2022, and is deemed to have received the Proceeding Package on November 11, 2022, the third day after its posting.

Issue(s) to be decided

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

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 March 30, 2021, indicating a monthly rent of \$2,400.00, due on the first day of the month for a tenancy commencing on April 1, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 3, 2022, for \$4,800.00 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 14, 2022;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 10:00 am;
- A Direct Request Worksheet 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?

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.

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in accordance with 88 of the Act.

On the Proof of Service Notice to End Tenancy, the landlord statement and the witness statement do not indicate on what day the 10 Day Notice was served to the tenant.

I find I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request proceeding.

For this reason, the landlord's application for an Order of Possession based on unpaid rent is dismissed, with leave to reapply.

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.

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: December 13, 2022

Residential Tenancy Branch