

## **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 (\$3,150.00)
- 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 landlord indicates that on October 29, 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 a Canada Post Customer Receipt containing a tracking number and a copy of a photograph of a post stamped envelope addressed to the tenant to confirm this service.

### **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? (\$3,150.00)

Is the landlord 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 landlord submitted the following evidentiary material:

- a copy of a residential tenancy agreement which was signed by the landlord and the tenant on July 14, 2021, indicating a monthly rent of \$1,325.00, due on the first day of the month for a tenancy commencing on August 15, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated October 1, 2022, for \$3,150.00 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;
- a copy of an unwitnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served to the tenant by leaving a copy in the tenant's mailbox at 9:30 am on October 1, 2022; 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 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 they served the tenant with the Notice of Dispute Resolution Proceeding– Direct Request and all documents in support of the application in accordance with section 89 of the *Act*.

I note that the landlord submitted a copy of a Canada Post Customer Receipt containing a tracking number to confirm a package was sent to the tenant on October 29, 2022. However, the landlord has not provided a copy of the Proof of Service Notice of Direct Request Proceeding form which would include a landlord statement establishing service of the Notice of Dispute Resolution Proceeding - Direct Request documents to the tenant. Without this accompanying statement, I find that I am not able to confirm what documents were included in package sent by registered mail on October 29, 2022.

I find that I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the tenant, 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:

*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 there is no effective date (the day when the tenant must move out of or vacate the site) on the 10 Day Notice. I find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*. It is possible to amend an incorrect date on the 10 Day Notice, but the *Act* does not allow an adjudicator to input a date where none is written.

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.

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 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 for a Monetary Order for unpaid rent, with leave to reapply.