



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

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 an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 22, 2017, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant will be deemed served with the Direct Request Proceeding documents on November 27, 2017, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of pages 1, 3, and 5 of a residential tenancy agreement between the landlord and the tenant;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 6, 2017 for \$3,200.00 in unpaid rent (the 10 Day Notice). 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 November 16, 2017;
- 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 registered mail at 9:51 am on November 6, 2017;
- A copy of a Canada Post Customer Receipt containing a tracking number to confirm a registered mailing was sent to the tenant on November 6, 2017; and
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on November 11, 2017, five days after its registered mailing.

Section 46 (4) of the *Act* states that, within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice.

I find that the fifth day for the tenant to have either paid the rent or disputed the notice was November 16, 2017. I further find that the landlord applied for dispute resolution on November 15, 2017, before the last day that the tenant had to dispute the 10 Day Notice.

The earliest date that the landlord could have applied for dispute resolution was November 17, 2017, meaning that the landlord made their application for dispute resolution too early.

Section 59 of the *Act* establishes that an Application for Dispute Resolution must “include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings.”

I find that the landlord has not submitted a complete tenancy agreement. I further find that I am not able to consider the landlord's Application for Dispute Resolution without these documents which form a part of the Application.

Due to the reasons listed above, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of November 6, 2017, with leave to reapply.

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

I dismiss the landlord's application for an Order of Possession and 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 22, 2017

Residential Tenancy Branch