



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Preliminary Matters

Paragraph 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 landlord C.H. has not signed the tenancy agreement. For this reason, I have amended the application to remove landlord C.H. as an applicant in accordance with section 64(3)(c) of the *Act*.

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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 15, 2018, the landlords personally served tenant I.S. the Notice of Direct Request Proceeding. Tenant I.S. signed the Proof of Service of the Notice of Direct Request Proceeding acknowledging receipt of the Direct Request Proceeding documents. In addition, the landlords had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlords and in accordance with section 89(1) of the *Act*, I find that tenant I.S. has been duly served with the Direct Request Proceeding documents on November 15, 2018.

The landlords submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 15, 2018, the landlords served tenant D.L. the Notice of Direct Request Proceeding by personally handing the documents to tenant I.S. Tenant I.S. signed the Proof of Service of the Notice of Direct Request Proceeding acknowledging receipt of the Direct Request Proceeding documents. In addition, the landlords had a witness sign the Proof of Service of the

Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlords and in accordance with section 89(2) of the *Act*, I find that tenant D.L. has been duly served with the Direct Request Proceeding documents on November 15, 2018.

Issue(s) to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

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

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by landlord Y.Y. on September 28, 2018 and the tenants on September 30, 2018, indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on October 01, 2018. Landlord C.W. did not sign the residential tenancy agreement;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 03, 2018, for \$2,500.00 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 November 14, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was slipped under the tenants' door at 8:05 p.m. on November 04, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlords must prove that they served the tenants with the 10 Day Notice in accordance with section 88 of the *Act*.

Section 88 of the *Act* allows for service by either sending the 10 Day Notice to the tenant by mail, by leaving a copy with the tenant, by leaving a copy in the tenant's mailbox or mail slot, attaching a copy to the tenant's door or by leaving a copy with an adult who apparently resides with the tenant.

In the special details section of the Proof of Service Notice to End Tenancy, the landlords have indicated that they placed the 10 Day Notice under the door of the rental unit which is not a method of service as indicated above.

For the above reason, I find that the 10 Day Notice has not been served in accordance with section 88 of the *Act*.

Therefore, I dismiss the landlords' application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice dated November 03, 2018, without leave to reapply.

The 10 Day Notice dated November 03, 2018, is cancelled and of no force or effect.

For the same reason listed above, I dismiss the landlords' application for a Monetary Order for unpaid rent with leave to reapply.

The landlords must reissue the 10 Day Notice and serve it in one of the ways prescribed by section 88 of the *Act*, or according to Residential Tenancy Policy Guideline #39, if the landlords want to apply through the Direct Request process.

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 on the basis of the 10 Day Notice dated November 03, 2018, is dismissed, without leave to reapply.

The 10 Day Notice dated November 03, 2018, is 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 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 19, 2018

Residential Tenancy Branch