Dispute Resolution Services

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 two signed Proof of Service of the Notice of Direct Request Proceeding forms on which the landlord declares that on September 16, 2020 the landlord served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on September 21, 2020, 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

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, in part, the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants, indicating a monthly rent of $1,200.00, due on the first day of each month for a tenancy commencing on February 01, 2020;

- A Direct Request Worksheet showing the rent owing during the relevant portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of $1,200.00, comprised of the balance of unpaid rent due by September 01, 2020;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated September 02, 2020, which the landlord states was served to the tenants on September 02, 2020, for $1,200.00 in unpaid rent due on September 01, 2020, with a stated effective vacancy date of September 15, 2020; and

- A copy of the Proof of Service of the Notice form showing that the landlord served the Notice to the tenants by way of posting it to the door of the rental unit on September 02, 2020. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

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 for 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 landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. 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 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.

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenants are deemed to have received the Notice on September 05, 2020, three days after its posting.

Section 46 of the *Act* provides, in part, the following with respect to a 10 Day Notice to End Tenancy for Unpaid Rent:

> **46** *(4) Within 5 days after receiving a notice under this section, the tenant may*
>
>> *(a) pay the overdue rent, in which case the notice has no effect, or*
>>
>> *(b) dispute the notice by making an application for dispute resolution.*

Section 55(2) of the *Act* provides, in part, the following with respect to a landlord's ability to request an order of possession of a rental unit:

Order of possession for the landlord

> **55** *(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

> *(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

I find that, as the tenants are deemed to have received the Notice on September 05, 2020, the tenants' latest opportunity to either pay, in full, the amount listed on the Notice, or to file for dispute resolution to dispute the Notice, would have been September 10, 2020.

Therefore, in accordance with the provisions of subsection 55(2)(b) of the *Act*, the landlord's earliest opportunity to apply for an Order of Possession would have been September 11, 2020, after the five-day period granted under section 46(4) for the tenants to file an application for dispute resolution to dispute the Notice, or to pay the outstanding rent in full, had lapsed.

I find that the landlord has filed an application for an Order of Possession based on unpaid rent earlier than permitted by the *Act*, as the landlord filed an "Application for Dispute Resolution by Direct Request" on September 09, 2020, which, along with the application filing fee, was established as being received by the Residential Tenancy Branch on September 09, 2020.

I further find that the landlord has not provided any evidentiary material to demonstrate that the tenants received the Notice, dated September 02, 2020, earlier than September 05, 2020. Based on the foregoing, the landlord's application for an Order of Possession and a monetary Order based on 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

I dismiss the landlord's application for an Order of Possession with leave to reapply.

I dismiss the landlord's application for a monetary Order with leave to reapply.

I dismiss the landlord's request to recover the $100.00 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: October 07, 2020

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Residential Tenancy Branch