



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, 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 filed by the Landlord for an order of possession and a monetary order based on unpaid rent.

The Landlords submitted a signed Proof of Service - Notice of Direct Request Proceeding document which declares that the Landlord served the Tenant with the Notice of Direct Request Proceeding and supporting documents by registered mail on January 27, 2021, which service was witnessed by L.B. An image of an envelope addressed to the Tenant, date-stamped January 27, 2021, and bearing a Canada Post registered mail label which included the Tracking Number was submitted in support. Based on the written submissions and evidence of the Landlord and in accordance with sections 89 and 90 of the *Act*, I find the Tenant is deemed to have received these documents on February 1, 2021, five days after they were mailed.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Is the Landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?
3. Is the Landlord entitled to recover the filing fee 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 the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the Landlord and the Tenant on May 21, 2020, indicating a monthly rent in the amount of \$1,250.00 due on the first day of each month, for a tenancy commencing on June 1, 2020; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 11, 2021 for \$2,300.00 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 January 26, 2021.

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.

Section 52 of the *Act* confirms that a notice to end tenancy when given by a landlord must be in the approved form. In this case, the 10 Day Notice relied upon by the Landlord is a 2-page form that was no longer approved or in use at the time it was issued. The current form of notice is available on the Residential Tenancy Branch website.

In light of the above, I find the 10 Day Notice is of no force or effect. Therefore, I order that the Landlord’s request for an order of possession based on the 10 Day Notice submitted into evidence is dismissed without leave to reapply.

Monetary relief for unpaid rent flows from the issuance of a valid notice to end tenancy. Accordingly, I order that the Landlord's request for a monetary order for unpaid rent based on the 10 Day Notice is dismissed with leave to reapply.

As the Landlord has not been successful, I order that the Landlord's request to recover the filing fee is dismissed without leave to reapply.

Conclusion

The Landlord's request for an order of possession based on the 10 Day Notice submitted into evidence is dismissed without leave to reapply.

The Landlord's request for a monetary order for unpaid rent based on the 10 Day Notice submitted into evidence is dismissed without leave to reapply.

As the Landlord has not been successful, the Landlord's request to recover the filing fee is dismissed 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: February 18, 2021

Residential Tenancy Branch