



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-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 to obtain an Order of Possession based on unpaid rent, to obtain monetary compensation for unpaid rent, and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlord on July 9, 2021.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on August 15, 2021 and August 16, 2021, the landlord sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by e-mail to the rental unit. The landlord provided a copy of the outgoing e-mails to confirm this service.

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 the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on November 30, 2019, indicating a monthly rent of \$1,425.00, due on the first day of each month for a tenancy commencing on January 1, 2020

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 22, 2021 with a stated effective vacancy date of July 1, 2021
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenant at 7:00 pm on June 22, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

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*.

Section 89 of the *Act* provides that a Notice of Dispute Resolution Proceeding - Direct Request may be served “*by any other means of service provided for in the regulations.*”

Section 43(2) of the *Residential Tenancy Regulation* provides that documents “*may be given to a person by emailing a copy to an email address **provided as an address for service by the person.***”

I find that the landlord has sent the Notice of Dispute Resolution Proceeding - Direct Request to the tenant by e-mail. However, I find there is no evidence to demonstrate that the tenant indicated documents could be served by e-mail.

I find the landlord has not demonstrated that the tenant's e-mail address was provided for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding – Direct Request to the tenant. However, I find there is a more impactful discrepancy in the landlord's documentation.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

- 52** *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*
 - (d) ... **state the grounds for ending the tenancy**... and*
 - (e) when given by a landlord, be in the approved form.*

I have reviewed all documentary evidence and I find that the 10 Day Notice does not indicate the amount of unpaid rent owing. I further find that this omission invalidates the 10 Day Notice as the landlord has not given clear grounds for ending the tenancy as required under section 52 of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated June 22, 2021, without leave to reapply.

The 10 Day Notice dated June 22, 2021 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 June 22, 2021, is dismissed, without leave to reapply.

The 10 Day Notice dated June 22, 2021, 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.

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: September 07, 2021

Residential Tenancy Branch