



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR

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 and to obtain monetary compensation for unpaid rent.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlord on September 17, 2021.

The landlord submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on September 25, 2021, the landlord sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm these mailings.

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*?

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 tenants, indicating a monthly rent of \$1,500.00, due on the first day of each month for a tenancy commencing on June 1, 2021

- A copy of the first two pages of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 2, 2021, for \$1,500.00 in unpaid rent. 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
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 12:30 pm on August 2, 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* which permits service *“by sending a copy by registered mail to the address at which the person resides...”*

The definition of registered mail is set out in section 1 of the *Act* as *“any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.”* Policy Guideline #12 on Service Provisions goes on to clarify that this *“includes Express post, if the signature option is used.”*

I find that the tracking numbers provided by the landlord with the Proof of Service Notice of Direct Request Proceeding forms are for packages sent by Canada Post's Express post mailing, which may or may not require a signature from the individual to confirm delivery to the person named as the respondent.

In this case, Canada Post's Online Tracking System shows that signatures were not required for the delivery of these Express post mailings and, as such, they do not meet the definition of registered mail as defined under the *Act*.

I find the landlord has not served the tenants notice of this application in accordance with section 89 of the *Act*. However, I find there is a more impactful issue with the landlord's application. I further find that the tenants are not prejudiced in considering the landlord's claim, despite not being properly served the Notice of Dispute Resolution Proceeding – Direct Request.

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

- 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...and***

(e) when given by a landlord, be in the approved form...

I have reviewed all documentary evidence and I find that there is no effective date (the day when the tenants must move out of the site) on the 10 Day Notice. I find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*. It is possible to amend an incorrect date on the 10 Day Notice, but the *Act* does not allow an adjudicator to input a date where none is written.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated August 2, 2021, without leave to reapply.

The 10 Day Notice dated August 2, 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.

Conclusion

The landlord's application for an Order of Possession based on the 10 Day Notice dated August 2, 2021, is dismissed, without leave to reapply.

The 10 Day Notice dated August 2, 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.

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 22, 2021

Residential Tenancy Branch