



Dispute Resolution Services

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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 filed by the Landlord for an order of possession and a monetary order for unpaid rent.

The Landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that they served the Tenant with a Notice of Dispute Resolution Proceeding and supporting documents by registered mail on November 26, 2021. Service in this manner was supported by Canada Post registered mail receipts confirming the date and time of service and including the tracking number. Pursuant to sections 89 and 90 of the Act, I find these documents are deemed to have been received by the Tenant on December 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 a monetary order for unpaid rent pursuant to sections 46 and 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 signed residential tenancy agreement indicating a monthly rent in the amount of \$1,100.00 due on the third day of each month, for a tenancy commencing on April 3, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 12, 2021 for \$1,100.00 in unpaid rent due on November 3, 2021 (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. No effective vacancy date was provided;
- A copy of a signed Proof of Service Notice to End Tenancy document which indicates that the 10 Day Notice was served on the Tenant by attaching a copy to the door of the Tenant’s residence on November 12, 2021;
- A copy of a Direct Request Worksheet showing the rent due and paid during the relevant period.

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.

Policy Guideline #39 provides direction to landlords who make an application for dispute resolution by Direct Request. With respect to service of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, it states:

The landlord must prove the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30). A Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities (form RTB-34) can be used for this purpose.

Because the tenant does not have an opportunity to present evidence on the issues in a direct request proceeding, it is essential that the landlord provide substantive proof of service.

In this case, the Landlord submitted a Proof of Service Notice to End Tenancy document which states the Tenant was served with the 10 Day Notice by attaching a copy to the Tenant's door.

Policy Guideline #39 describes what is considered sufficient proof of service when a document is attached to a tenant's door:

Signed witness statement confirming the name of the person who served the document(s) by attaching a copy to the door, what document(s) they served, the date and time of service and the name of the person the documents were addressed to

The Proof of Service Notice to End Tenancy document submitted by the Landlord does not include a witness statement or other substantive proof that the 10 Day Notice was served on the Tenant in accordance with the Act and Policy Guideline #39.

I also note the 10 Day Notice did not include an effective date, contrary to section 52(c) of the Act.

Considering the above, I order that the Landlord's requests for an order of possession and a monetary order for unpaid rent are dismissed with leave to reapply.

Conclusion

The Landlord's requests for an order of possession and a monetary order for unpaid rent are dismissed 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: January 6, 2022