



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-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 landlords to obtain an Order of Possession based on unpaid rent.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlords on April 1, 2022.

The landlords submitted a copy of a Proof of Service Notice of Direct Request Proceeding form which declares that on April 14, 2022, the landlords sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm they served the tenant.

Based on the written submissions and evidence of the landlords and in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on April 14, 2022 and are deemed to have been received by the tenant on April 19, 2022, the fifth day after they were mailed.

Issue to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 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 landlords submitted the following relevant evidentiary material:

- a copy of a residential tenancy agreement which was signed by the landlords on July 19, 2021 and the tenant on July 20, 2021, indicating a monthly rent of \$1,400.00, due on the first day of each month for a tenancy commencing on February 1, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated March 14, 2022, for \$1,400.00 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 on the stated effective vacancy date of March 27, 2022;
- a copy of an email sent to the tenant on March 14, 2022 with the 10 Day Notice attached; and;
- a copy of a Direct Request Worksheet showing the rent owing during the relevant period.

Analysis

In this type of matter, the landlords must prove they served the tenant with the 10 Day Notice as per section 88 of the *Act*. Section 88 of the *Act* allows for service by sending the 10 Day Notice to the tenant by mail, by leaving a copy with the tenant, by leaving a copy in the tenant’s mailbox or mail slot, by attaching a copy to the tenant’s door, by leaving a copy with an adult who apparently resides with the tenant, or by any other means of service provided for in the regulations.

On March 1, 2021, section 43(1) of the *Residential Tenancy Regulation* was updated to provide 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.*”

Policy Guideline #12 on Service Provisions provides that “*if there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is not advisable to use email as a service method.*”

The landlords have indicated that they served the 10 Day Notice to the tenant by e-mail. However, I find there is no evidence to demonstrate that the tenant specifically provided their e-mail address for service of documents, as required by section 43(1) of the *Residential Tenancy Regulation* and Policy Guideline #12.

I find the landlords have failed to demonstrate that e-mail service was in accordance with the *Act* and the *Regulation*. For this reason, I find that the 10 Day Notice has not

been served in accordance with section 88 of the *Act* or section 43(1) of the *Residential Tenancy Regulation*.

Therefore, I dismiss the landlords' application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated March 14, 2022, without leave to reapply.

The 10 Day Notice dated March 14, 2022, is cancelled and of no force or effect.

Conclusion

The landlords' application for an Order of Possession based on the 10 Day Notice dated March 14, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated March 14, 2022, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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: May 11, 2022

Residential Tenancy Branch