



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 May 24, 2022.

The landlord submitted four signed Proof of Service Notice of Direct Request Proceeding forms which declare that on June 9, 2022, 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.

Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on June 9, 2022 and are deemed to have been received by the tenants on June 14, 2022, the fifth day after their registered mailing.

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, Tenant W.S., and Tenant R.W. on November 14, 2020, indicating a monthly rent of \$2,800.00, due on the first day of each month for a tenancy commencing on November 28, 2020
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 4, 2022, for \$3,600.00 in unpaid rent. The 10 Day Notice provides that the tenants 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 May 20, 2022
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenants by registered mail at 4:15 pm on May 4, 2022
- A copy of a FedEx Shipment Summary showing that a package was sent to Tenant R.W. by ground shipment on May 4, 2022
- 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 that they served the tenants with the 10 Day Notice as per section 88 of the *Act* which allows for service by either sending the 10 Day Notice to the tenant by regular or registered mail, by leaving a copy with the tenant, by leaving a copy in the tenant's mailbox or mail slot, attaching a copy to the tenant's door or by leaving a copy with an adult who apparently resides with the tenant.

The landlord submitted a copy of a FedEx Shipment Summary showing that the 10 Day Notice was sent by FedEx ground delivery. I find that FedEx shipment is a form of courier service and not regular mail. I find the 10 Day Notice was not served by regular mail.

I also note that 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." I find that FedEx shipments are not provided by Canada Post and as such I find that the 10 Day Notice was not served by registered mail.

For these reasons, I find that the 10 Day Notice has not been served in accordance with section 88 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 May 4, 2022, without leave to reapply.

The 10 Day Notice dated May 4, 2022, is cancelled and of no force or effect.

For the same reason listed above, I dismiss the landlord's application for a Monetary Order for unpaid rent 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.

The landlord must reissue the 10 Day Notice and serve it in one of the ways prescribed by section 88 of the *Act*, or according to Residential Tenancy Policy Guideline #39, if the landlord wants to apply through the Direct Request process.

Conclusion

The landlord's application for an Order of Possession based on the 10 Day Notice dated May 4, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated May 4, 2022, 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: July 04, 2022