



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 landlords 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 landlords on July 19, 2022.

The landlords submitted a copy of two Proof of Service Notice of Direct Request Proceeding forms which declare that on July 21, 2022, the landlords sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The landlords provided a copy of two Canada Post Customer Receipts containing the tracking numbers to confirm they served the tenants.

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 July 21, 2022 and are deemed to have been received by the tenants on July 26, 2022, the fifth day after they were mailed.

Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords 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 landlords submitted the following relevant evidentiary material:

- a copy of a residential tenancy agreement which was signed by the landlords and the tenants on December 13, 2021, indicating a monthly rent of \$3,600.00, due on the first day of each month for a tenancy commencing on December 20, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated May 4, 2022, for \$1,600.00 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 15, 2022;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants’ door at 7:18pm on May 4, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

Section 46 (4) of the *Act* states that, within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice.

The landlord served the tenant the 10 Day Notice to the tenant by posting it to the door of the rental unit on May 4, 2022. I find that the tenant filed an Application for Dispute Resolution disputing the 10 Day Notice on May 10, 2022.

As the tenant has filed to dispute the 10 Day Notice, I find that this matter cannot proceed through the Direct Request process.

I further find that a hearing has taken place regarding this matter on August 4, 2022 and the landlords were awarded an Order of Possession based on the 10 Day Notice dated May 4, 2022.

Res judicata prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. A previously decided issue is comparable to the criminal law concept of double jeopardy.

For these reasons, the landlords' application for an Order of Possession based on the 10 Day Notice dated May 4, 2022 is dismissed without leave to reapply.

The purpose of a Direct Request Proceeding is primarily to obtain an Order of Possession based on unpaid rent. If the Order of Possession is granted, the landlords may also be entitled to the unpaid rent associated with the 10 Day Notice.

The Direct Request is not an opportunity for the landlords to obtain a faster resolution to a monetary claim.

As the landlords were not successful in obtaining an Order of Possession through the Direct Request process, I find that the landlords are not entitled to pursue monetary compensation for unpaid rent by Direct Request.

The landlords' application for a Monetary Order for unpaid rent is dismissed with leave to reapply through the participatory process.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlords' application for an Order of Possession based on the 10 Day Notice dated May 4, 2022 without leave to reapply.

I dismiss the landlords' application for a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlords' 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: August 17, 2022

Residential Tenancy Branch