

DECISION

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 the landlord's Application for Dispute Resolution (Application) for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act (\$100.00)

Service of Notice of Dispute Resolution Proceeding - Direct Request

The landlord submitted a signed Proof of Service Landlord's Notice of Direct Request Proceeding which declares that the tenant was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in accordance with section 89 of the Act. The applicant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service. Based on the written submissions of the landlord and in accordance with section 90 of the Act:

- I find that Tenant P.O. was served on October 7, 2022, by registered mail, and is deemed to have received the Proceeding Package on October 12, 2022, the fifth day after the registered mailing.

Issue(s) to be decided

Is the landlord entitled to an Order of Possession based on unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?
(\$100.00)

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 evidentiary material:

- A copy of a residential tenancy agreement which was signed by the tenant on August 27, 2021, indicating a monthly rent of \$1,200.00, due on the twenty-eighth day of the month for a tenancy commencing on September 1, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 22, 2022, for \$1,150.00 in unpaid rent that was due on May 28, 2022. 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 October 7, 2022;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail at 1:02 pm on September 22, 2022;
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the 10 Day Notice was sent to the tenant on September 22, 2022;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

Is the landlord entitled to an Order of Possession based on unpaid rent?

Section 46(1) of the Act states that *“A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.”*

The landlord issued a 10 Day Notice on September 22, 2022, listing rent for June 2022 that was due on May 28, 2022. However, the Direct Request Worksheet shows that the rent due on May 28, 2022 was paid on July 5, 2022, two and a half months before the date of the 10 Day Notice.

I find that, at the time the 10 Day Notice was issued, there was no rent owing for June 2022. For this reason, I find the landlord has not complied with the provisions of section 46 of the Act, regarding the 10 Day Notice issued to the tenant.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated September 22, 2022, without leave to reapply.

The 10 Day Notice dated September 22, 2022, is cancelled and of no force or effect.

Is the landlord entitled to recover the filing fee for this application from the tenant?

As the landlord was not successful in this application, the landlord's application for authorization to recover the filing fee for this application is dismissed, without leave to reapply.

Conclusion

The landlord's application for an Order of Possession based on the 10 Day Notice dated September 22, 2022, and pursuant to sections 46 and 55 of the Act, is dismissed without leave to reapply. This tenancy will continue until ended in accordance with the Act.

The landlord's application for authorization to recover the filing fee for this application from the tenant, pursuant to section 72 of the Act, is dismissed 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: November 9, 2022

Residential Tenancy Branch