

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

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 mailing. Based on the written submissions of the landlord and in accordance with section 90 of the Act:

- I find that Tenant L.T. was served on October 14, 2022, by registered mail, and is deemed to have received the Proceeding Package on October 19, 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?

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 landlord and the tenant on February 19, 2021, indicating a monthly rent of \$976.00, due on the first day of the month for a tenancy commencing on March 1, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 12, 2022, for \$976.00 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 July 31, 2021;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door and sent to the tenant by e-mail at 11:52 am on September 12, 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?

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.

I find a dispute resolution hearing was held on November 8, 2022, dealing with a tenant's application to cancel the 10 Day Notice dated September 12, 2022. The Arbitrator made a finding to uphold the 10 Day Notice and issued an Order of Possession for the landlord.

I therefore find that this current application is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again.

For this reason, the landlord's application for an Order of Possession based on the 10 Day Notice dated September 12, 2022, is dismissed without leave to reapply.

Conclusion

The landlord's Application for an Order of Possession based on the 10 Day Notice dated September 12, 2022, 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 17, 2022

Residential Tenancy Branch