



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANDRISE MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

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 for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 11, 2015, the landlord’s agent “DH” served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on March 16, 2015, 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*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which lists the landlord as being a limited company, which, for the purpose of this decision, will be identified using their initials “SHD”. The agent for SHD and the tenant signed the tenancy agreement on November 1, 2011, indicating a monthly rent of \$780.00 due on the first day of the month for a tenancy commencing on November 1, 2011;

- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$680.00 for outstanding rent owing for December 2014;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 1, 2015, which the landlord states was served to the tenant on January 1, 2015, for \$680.00 in unpaid rent due on December 1, 2015, with a stated effective vacancy date of January 10, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "TP" served the Notice to the tenant by way of personal service via hand-delivery at 7:00 pm on January 1, 2015. The personal service was confirmed as the tenant acknowledged receipt of the Notice by signing the Proof of Service form.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence and find that in accordance with section 88 of the *Act* the tenant was duly served with the Notice on January 1, 2015.

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

I find that the evidentiary material provided by the applicant brings into question whether the landlord identified on the Application for Dispute Resolution by Direct Request form is the same landlord identified on the tenancy agreement. The landlord listed on the application form is a limited company identified as "LM". However, the landlord listed on the tenancy agreement is identified as being a different business entity identified as "SHD". The tenancy agreement is signed by an agent for SHD whose name is not included on the tenancy agreement and it cannot be determined whether the agent for SHD also acted as an agent for LM. There is also no evidence from the landlord SHD indicating that they have changed agents or appointed

different agents. The landlord listed on the Application for Dispute Resolution by Direct Request and on the Notice is identified as the business entity LM.

As previously indicated, in an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. I find that there are deficiencies with this application that cannot be clarified by way of the Direct Request Proceeding, as the application before me brings into question whether the landlord is correctly and consistently identified on both the application form, the Notice, and on the tenancy agreement. The documents included with this application indicate that the landlord identified on the tenancy agreement is not the same as the landlord listed on the other documents. Furthermore, there is no information provided in any of the evidentiary material submitted by the landlord that speaks to the issue of whether the tenancy agreement signed by SHD was transferred to, and inherited by, LM, and further, there is no evidentiary material to suggest that SHD and LM may be the same entity or joint landlords with respect to the rental unit identified in the application.

Within the Direct Request process, the tenancy agreement is considered to be a vital document which establishes the parties to the tenancy agreement and the details agreed upon by the parties to the agreement. As the applicant landlord, LM, has not established that it entered into a tenancy agreement with the tenant, I find that I am unable to consider this application for dispute resolution via the Direct Request process. Therefore, I dismiss the landlord's application for an Order of Possession and a monetary Order with leave to reapply.

It remains open to the landlord to reapply for dispute resolution via the Direct Request process if all requirements for an application for dispute resolution via Direct Request, as outlined in Policy Guideline #39, can be met, or, in the alternative, the landlord may wish to submit an application for dispute resolution to be heard by way of a participatory hearing.

Conclusion

I dismiss the landlord's application with 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: March 12, 2015

Residential Tenancy Branch

