



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE PARKSVILLE-QUALICUM BEACH REALTY 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 17, 2015, the landlord’s agent “VD” 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 22, 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 was signed by the landlord's agent and the tenant on January 18, 2013, indicating a monthly rent of \$990.00 due on the first day of the month for a tenancy commencing on February 1, 2013;
- 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 \$1,270.00 for outstanding rent owing for February 2015 and March 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 2, 2015, which the landlord states was served to the tenant on March 2, 2015, for \$1,270.00 in unpaid rent due on March 1, 2015, with a stated effective vacancy date of March 12, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent VD served the Notice on March 2, 2015 at 9:35 am by way of leaving the Notice with an individual, bearing the initials "AL", identified as being the tenant's mother, who the landlord contends is an adult who apparently resides with the tenant. The individual identified as "AL" confirmed receipt of the Notice by signing the Proof of Service form.

Analysis

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 have reviewed all documentary evidence provided by the landlord. Section 88 of the *Act* provides the approved methods by which documents can be served. Section 88 reads, in part, as follows:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

The landlord stated that the Notice was served to the tenant by leaving it with an adult who apparently resides with the tenant. If service of the Notice is carried out in this manner, the landlord is required to provide details that support the landlord's claim that the adult to whom the Notice was given does indeed reside with the tenant. I find that the information provided by the landlord does not adequately demonstrate that this requirement has been fulfilled and does not provide sufficient details to clearly establish that service of the Notice was carried out in a manner consistent with section 88 of the *Act*.

The tenancy agreement included with this application does not indicate whether any other tenants or occupants reside with the tenant and does not contain any information to identify whether the individual identified as "AL" is an adult who resides with the tenant. The Proof of Service form provided by the landlord does not include any additional information to establish that "AL" resides with the tenant, and furthermore, there is no information provided in any of the evidentiary material submitted by the landlord that speaks to the issue of whether "AL" is an adult who apparently resides with the tenant.

On the Proof of Service form, the landlord's agent states only that AL is the tenant's mother, but does not provide any additional information to establish that AL resides with the tenant. Furthermore, the tenancy agreement includes an addendum item, item #11,

which specifically demonstrates that the occupancy of the rental unit is limited to the tenant, the tenant's son, and the tenant's daughter. In the absence of any additional evidentiary material to establish otherwise, the provisions of item #11 suggest that the parties have not agreed to recognize the tenant's mother as an occupant of the rental unit.

I find that, by serving the Notice to an individual that has not been clearly proven to be an adult who apparently resides with the tenant, the landlord has not served the Notice in a manner consistent with the service provisions for documents as provided under section 88 of the *Act*. I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Notice in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with section 88(i) of the *Act*. I therefore find that as the Notice was not properly served in accordance with the *Act*, it is set aside and of no effect.

As the landlord's application for an Order of Possession arises from a Notice that has been set aside, I dismiss the landlord's application for an Order of Possession without leave to reapply. The landlord may wish to serve a new Notice to the tenant if the landlord so wishes.

Based on the foregoing, I dismiss the landlord's application for a monetary Order with leave to reapply.

Conclusion

I dismiss the landlord's application for an Order of Possession, based on the March 2, 2015 Notice, without leave to reapply. I dismiss the landlord's application for a monetary Order 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 27, 2015

Residential Tenancy Branch

