



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 10, 2015, the landlord served the tenant “CB” with the Notice of Direct Request Proceeding via registered mail.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 11, 2015, the landlord served the tenant “AR” with the Notice of Direct Request Proceeding via registered mail.

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:

- Two copies of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord on October 10, 2011 and signed by the tenants on October 17, 2011, indicating a monthly rent of \$1,150.00 due on the first day of the month for a tenancy commencing on November 1, 2011;

- The landlord established the manner in which rent was raised from the initial \$1,150.00 stated in the tenancy agreement to the current amount of \$1,175.00 by providing a copy of a “Notice of Rent Increase” form, dated December 23, 2013, provided to the tenants during the course of the tenancy;
- 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 \$1,175.00 for outstanding rent owing for March 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 3, 2015, which the landlord states was served to the tenants on March 3, 2015, for \$1,175.00 in unpaid rent due on March 1, 2015, with a stated effective vacancy date of March 13, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice on March 3, 2015 at 6:00 pm to the tenants by way of leaving the Notice with an individual, identified as “C” and as being the fiancé of the tenant “AR”, who the landlord contends is an adult who apparently resides with the tenants. The Proof of Service establishes that the service was witnessed by “LC” and a signature for LC is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenants 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 tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

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 89 of the *Act* provides the approved methods by which an application for dispute resolution can be served. Section 89 provides, in part, as follows:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by 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;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

On the Proof of Service of the Notice of Direct Request Proceeding forms, the landlord indicates that each tenant was served the Direct Request Proceeding documents by way of registered mail. If service of the Direct Request Proceeding documents is carried out in this manner, the landlord must provide evidentiary material, in the form of a Canada Post Registered Mail Receipt which includes the tracking number, as proof of service via registered mail. The landlord has provided only one Canada Post Registered Mail Receipt which does not contain the name of the individual to whom the registered mail was sent or the address to which the registered mail item was to be delivered. In the absence of this supporting information, I am unable to determine or infer within the scope of the Direct Request process, which of the two respondent tenants were the intended recipients of the registered mail item. Therefore, I find that the landlord has not proven service of the Notice of Direct Request Proceeding to either

respondent tenants in accordance with the *Act*. I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Direct Request Proceeding documents in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*.

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;
- (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(s). 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 one of the tenants. 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 either of the tenants and does not contain any information to identify whether the individual, identified, for the purpose of this decision, as bearing the initial "C" to identify his first name, is an adult who resides with either of the tenants. The Proof of Service form provided by the landlord does not include any additional information to establish that "C" is in fact an adult who apparently resides with

the tenant(s), and furthermore, there is no information provided in any of the evidentiary material submitted by the landlord that speaks to the issue of whether “C” is an adult who apparently resides with either of the tenants. On the Proof of Service form, the landlord merely conveys that “C” is the fiancé of the tenant “AR” but does not demonstrate, in accordance with the requirements of section 88 of the Act, that “C” is an adult who apparently *resides* with the tenant(s).

I find that, by serving the Notice to an individual who has not been clearly proven to be an adult who apparently resides with the tenant(s), 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 the landlord has not demonstrated that the Notice was properly served in accordance with the Act, and 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(s) 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 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 25, 2015

Residential Tenancy Branch

