



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 April 21, 2015, the landlord’s agent “TB” served the tenant with the Notice of Direct Request Proceeding by way of posting it to the door of the rental unit at 3:05 pm. The Proof of Service form establishes that the service was witnessed by “LF” and a signature for LF is included on the form.

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 April 24, 2015, three days after their posting.

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 February 17, 2015 indicating a monthly rent of \$700.00 due on the first day of the month;
- 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 \$700.00 for outstanding rent owing for April 2015;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 2, 2015, which the landlord states was served to the tenant on April 2, 2015, for \$700.00 in unpaid rent due on April 1, 2015, with a stated effective vacancy date of April 12, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "TB" served the Notice to the tenant by way of leaving the Notice in the mail box of the rental unit on April 2, 2015. The Proof of Service establishes that the service was witnessed by "LF" and a signature for LF is included on the 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

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.

Policy Guideline #39 provides information with respect to the framework of the Direct Request process. The guideline provides information with respect to the approved methods of service available to the landlord to serve the Notice to a tenant in accordance with the Direct Request process. Within the purview of the Direct Request process, service of the Notice by placing it in a mail box is not permitted. This information regarding service of the Notice is also included on the Proof of Service form, on which the landlord is notified that service via leaving the Notice in a mail box is not approved for the Direct Request process.

I find that by serving the Notice to the tenant by leaving it in the mail box of the rental unit, the landlord has not served the Notice in an approved manner in accordance with the Direct Request process as outlined in Policy Guideline #39.

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 business entity which is different than the organization listed on the first page of the tenancy

agreement. I find that the landlord has not demonstrated whether the landlord listed on the application form inherited the tenancy agreement from the landlord listed on the tenancy agreement, or whether they had authorization to act as an agent for the landlord listed on the tenancy agreement.

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 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 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.

Based on the foregoing, I find the landlord has not served the Notice in an approved manner in accordance with the Direct Request process as outlined in Policy Guideline #39 and that the landlord's application contains deficiencies which do not permit me to consider this application for dispute resolution via the Direct Request process. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which clarifies the questions raised by these inconsistencies. 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 via a participatory hearing. Given the nature of the deficiency identified with respect to the tenancy agreement, the landlord may wish to submit an application for dispute resolution to be heard via 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: April 24, 2015

Residential Tenancy Branch

