



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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on April 19, 2015, the landlord served the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided three copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 tenants have been deemed served with the Direct Request Proceeding documents on April 24, 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:

- 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 and the tenant “JL” on February 17, 2012, indicating a monthly rent of \$1,400.00 due

on the first day of the month for a tenancy commencing on February 18, 2012. Although a second tenant, identified as “CC”, is named as a respondent on the application, “CC” is not listed on the tenancy agreement, and a signature for CC does not appear on the tenancy agreement. Therefore, I will consider the landlord’s application against the tenant JL only;

- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$2,100.00 for outstanding rent, comprised of unpaid rent in the amount of \$700.00 owing for March 2015 and unpaid rent in the amount of \$1,400.00 owed for April 2015;
- A photograph of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice).
- A photograph of a copy of the Proof of Service of the Notice 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 landlords 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. Direct Requests” provides the guidelines which govern the Direct Request process. The guideline provides that the onus is on the landlord to ensure that they have included all required documents necessary for an application for dispute

resolution via the Direct Request process. Policy Guideline #39 establishes that the landlord must provide, when making an application for dispute resolution, a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) served to the tenant, and proof that the landlord served the tenant with the 10-Day Notice to End Tenancy for Unpaid Rent.

The landlord has provided photographs of a copy of the Notice served to the tenant and a photograph of a Proof of Service of the Notice form. The Residential Tenancy Branch Dispute Resolution Rules of Procedure (the Rules) provides in part, under rule #3.7, the following:

3.7 Evidence must be organized, clear and legible.

All documents to be relied on as evidence must be clear and legible.

Documents must be legible copies, not photographs of printed material.

I find that the photographs of the Notice and of the Proof of Service of the Notice form, in the manner in which they are presented, are not clear and do not allow for the reader to discern the information provided on the documents. I further find that, by providing photographs of a copy of the Notice served to the tenant and a photograph of a Proof of Service of the Notice form, the landlord has not complied with rule #3.7, in that the landlord has not provided legible copies of all documents, and therefore, I further find that the landlord has not complied with the criteria set out in Policy Guideline #39, as the landlord has not provided copies of all documents required for the Direct Process as outlined in Policy Guideline #39.

Based on the foregoing, I find that the landlord's application is incomplete and does not meet the criteria established by Policy Guideline #39. Therefore, I dismiss the landlord's application for an Order of Possession and a monetary Order with leave to reapply.

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: May 4, 2015

Residential Tenancy Branch

