



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY INCORPORATED
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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on May 14, 2015, the landlord's agent "AF" served the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two 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. The Proof of Service form also establishes that the service was witnessed by "CF" and a signature for CF 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 tenants have been deemed served with the Direct Request Proceeding documents on May 19, 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 on July 30, 2013, indicating a monthly rent of \$1,275.00 due on the first day of the month for a tenancy commencing on August 15, 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 \$1,275.00 for outstanding rent owing for May 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 2, 2015, which the landlord states was served to the tenants on May 2, 2015, for \$1,275.00 in unpaid rent due on May 1, 2015, with a stated effective vacancy date of May 15, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "AF" served the Notice to the tenants by way of posting it to the door of the rental unit at 1:25 pm on May 2, 2015. The Proof of Service establishes that the service was witnessed by "CF" and a signature for CF 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.

"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 tenancy agreement. I find that the landlord has provided a copy of a tenancy agreement which is not in accordance with section 12

of the *Residential Tenancy Regulation*. Section 12 of the *Residential Tenancy Regulation* provides, in part, the following with respect to the requirements for tenancy agreements:

12 (1) A landlord must ensure that a tenancy agreement is

(b) signed and dated by both the landlord and the tenant,

Within the Direct Request process, the tenancy agreement is considered to be a vital document which establishes the parties to the tenancy agreement, the correct address of the rental unit, and the details agreed upon by the parties to the agreement, such as the day in the month on which the rent is due. The manner in which the copy of the tenancy agreement provided by the landlord is drafted demonstrates that it does not fulfill the requirements as set out in section 12 of the *Residential Tenancy Regulation*, as it does not include the signature of either tenant listed on the tenancy agreement. Therefore, as neither tenant listed on the tenancy agreement signed the agreement, I cannot determine, within the narrow scope of the Direct Request process, whether the tenants endorsed the terms of the tenancy agreement.

As the tenancy agreement does not adhere to the criteria set out for tenancy agreements under the *Residential Tenancy Regulation*, I find that the landlord's application contains a deficiency which does not permit me 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. 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 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: May 20, 2015

Residential Tenancy Branch