



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 Applicant for an Order of Possession based on unpaid rent and a monetary Order.

The Applicant submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 20, 2015, at 7:48 pm, the Applicant served the tenant “TA” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant “TA” acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by “SP” and a signature for SP is included on the form.

Based on the written submissions of the Applicant, and in accordance with section 89 of the *Act*, I find that the tenant “TA” has been duly served with the Direct Request Proceeding documents on May 20, 2015.

The Applicant submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 20, 2015, the Applicant served the tenant “SS” with the Notice of Direct Request Proceeding via registered mail. The Applicant 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 Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant “SS” has been deemed served with the Direct Request Proceeding documents on May 25, 2015, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the Applicant entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the Applicant entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The Applicant 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 listed the landlord as an individual bearing the initials “LB” and signed on behalf of LB by a different individual bearing the initials “AW”. The tenancy agreement was signed by “AW” and the tenants on April 1, 2015, indicating a monthly rent of \$2,100.00 due on the first day of the month for a tenancy commencing on April 1, 2015;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the Applicant establishes a monetary claim in the amount of \$2,100.00 for outstanding rent owing for May 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 7, 2015, which the Applicant states was served to the tenants on May 7, 2015, for \$2,100.00 in unpaid rent due on May 1, 2015, with a stated effective vacancy date of May 7, 2015; and
- A copy of the Proof of Service of the Notice showing that “AW” served the Notice to the tenants by way of posting it to the door of the rental unit at 3:05 pm on May 7, 2015. The Proof of Service establishes that the service was witnessed by “SP” and a signature for SP 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 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 an individual bearing the initials "XW" and is different from the individual bearing the initials "LB" listed as the landlord on the first page of the tenancy agreement. I find that the Applicant 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 the Applicant has 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 and whether the Applicant was given authority to apply for dispute resolution on behalf of the individual listed as the landlord 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. 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 Applicant'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 26, 2015

Residential Tenancy Branch

