



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

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.

The Applicant submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 19, 2015, the Applicant’s agent “AS” served the tenant 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 has been deemed served with the Direct Request Proceeding documents on May 24, 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*?

Background and Evidence

The Applicant 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 listed the landlord as an individual bearing the initials “GS” and signed by “GS” and the tenant on April 7, 2015, indicating a monthly rent of \$500.00 due on the last day of the month preceding the month for which rent is due;

- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the Applicant establishes that there is unpaid rent in the amount of \$500.00 which was due by April 31, 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 1, 2015, for \$500.00 in unpaid rent due on April 31, 2015, with a stated effective vacancy date of May 15, 2015; and

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 "AM" and is different from the individual bearing the initials "GS" listed as the landlord on 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.

There is an agent, bearing the initials "AS", listed on the Application for Dispute Resolution by Direct Request form. The Applicant "AM" has included a signed

authorization which authorizes “AS” to act as his agent. However, there is no evidentiary material which demonstrates that the landlord listed on the tenancy agreement, “GS”, authorized either of “AM” or “AS” to act as an agent, or to demonstrate that either of “AM” or “AS” inherited the tenancy agreement from the landlord listed on the tenancy agreement.

Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request. Policy Guideline # 39 directs that, as part of the application, a landlord must include proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent. Policy Guideline 39 provides:

PROOF OF SERVICE

10-Day Notice to End Tenancy

The landlord must prove the tenant was served with the 10-Day Notice to End Tenancy.

The service requirements for direct request materials are narrow to reflect the fact that the tenant does not have an opportunity to present evidence on the issues, unless they previously filed their own application for dispute resolution, seeking cancellation of the Notice to End Tenancy.

A landlord must serve the tenant with a 10-Day Notice to End Tenancy by:

- registered mail;
- in person, with a witness verifying it was served; or
- by posting it on the tenant’s door or in an equally conspicuous place, with a witness verifying it was served.

Proof of service of the 10 Day Notice to End Tenancy may take the form of:

- registered mail receipt and printed tracking report;
- a receipt signed by the tenant, stating they took hand delivery of the document(s); or
- a witness statement that they saw the landlord deliver the document(s).

As part of an application for dispute resolution by Direct Request, a landlord must provide a Proof of Service form to confirm how the Notice was served. The Applicant has not provided a Proof of Service Notice to End Tenancy. Therefore, I find that I am not able to confirm service of the Notice to the tenant, which is a requirement of the Direct Request process

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. The Applicant has also failed to provide a Proof of Service Notice to End Tenancy, which is a requirement of 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 with leave to reapply.

It remains open to the Applicant 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 Applicant 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 Applicant 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: June 03, 2015

Residential Tenancy Branch

