



Dispute Resolution Services

Page: 1

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 July 16, 2015, at 2:30 PM, the landlord served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on July 16, 2015.

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 and the tenant on June 24, 2014, indicating a monthly rent of \$950.00 due on the 30th day of the month for a tenancy commencing on June 29, 2014;

- 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 \$895.00 for outstanding rent, comprised of the balance of unpaid rent owing for July 2015, as of July 8, 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated July 1, 2015, which the landlord states was served to the tenant on July 1, 2015, for \$995.00 in unpaid rent due on June 30, 2015, with a stated effective vacancy date of July 15, 2015; and
- A copy of the Proof of Service of the Notice on which the landlord states that she served the Notice to the tenant by way of posting it to the door of the rental unit at 4:00 PM on July 1, 2015. The Proof of Service form establishes that the service was witnessed by “JJ” and a signature for JJ 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.

I have reviewed all documentary evidence provided by the landlord. Section 88 of the *Act* provides the approved methods by which documents can be served. Section 88 reads, in part, as follows:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

On the first page of the Proof of Service of the Notice form, the landlord has checked a box indicating that the Notice was attached to the door. However, the landlord also states, under the “special details” section, that the Notice was placed in the screen door, and further stated that the Notice was placed in such a manner that it may fall to the tenant’s feet when the screen was opened. On the second page of the Proof of Service of the Notice form, the landlord provided further information to convey that the Notice was placed in the screen door sticking out of the door. The information provided by the landlord with respect to the manner in which the Notice was served demonstrates that the Notice was not attached or affixed to the door, as required under the service provisions of the Act, but was instead placed in a screen door in such a fashion that, according to the landlord, would lead to the Notice falling from the screen door when it was opened.

The landlord did not provide any information to depict that the Notice was attached to the door, rather, only provided that it was placed in some manner in a screen door which made it susceptible to falling to the feet of the tenant. Based on the submissions and evidence provided by the landlord, I find that I am unable to determine that the Notice was attached to the door as permitted under section 88 of the *Act*.

Therefore, I find that the landlord has not demonstrated that the Notice was attached to the door, as indicated on the Proof of Service of the Notice form. I further find that the tenant has not been served with the Notice in a manner consistent with the service provisions for documents as provided under section 88 of the *Act*. I also find that there is no evidence before me that establishes that the landlord was given leave to serve the Notice in an alternative fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with section 88(i) of the *Act*.

Based on the foregoing, I find that the landlord has not demonstrated that the Notice was properly served in accordance with the *Act*, and therefore, the Notice is set aside and is of no force and effect.

As the landlord's application for an Order of Possession arises from a Notice that has been set aside, I dismiss the landlord's application for an Order of Possession, based on the July 1, 2015 Notice, without leave to reapply. The landlord may wish to serve a new Notice to the tenant if the landlord so wishes.

I dismiss the landlord's application for a monetary Order with leave to reapply.

I further find that the evidentiary material provided by the landlord brings into question whether the tenant has been correctly identified on the Application for Dispute Resolution by Direct Request form. The tenants listed on the tenancy agreement are individuals bearing the initials "BA" and "GA" and are different from the individual bearing the initials "RA" listed as the respondent tenant on the application form.

Although the landlord has provided a note to convey that the tenant named as the respondent on the application form, "RA", is the same person as the tenant identified as "BA" 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 is no evidence before me to demonstrate that the individual named as the respondent on the application form, "RA", endorsed the tenancy agreement provided as part of the application.

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 and whether it correctly depicts the legal name of the tenant "RA", 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 for an Order of Possession without leave to reapply.
I dismiss the landlord's application for a monetary Order 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: July 20, 2015

Residential Tenancy Branch

