



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 a Monetary Order and an Order of Possession based on unpaid rent .

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 29, 2015, the landlord’s agent personally served the tenant the Notice of Direct Request Proceeding. The Proof of Service document submitted by the landlord indicates the same person acted as the landlord serving the documents and as a witness for service.

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, indicating a monthly rent of \$900.00, due on the first day of the month for a tenancy commencing on November 1, 2014;
- A Monetary Order Worksheet and ledger showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 21, 2015, and personally served to the tenant on June 22, 2015, with a stated effective vacancy date of June 30, 2015, for \$1,800.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 5:00 (a.m. or p.m. not indicated) on June 22, 2015. This proof of service document indicates the same person acted as the landlord serving the documents and as a witness for service. The 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

As the Direct Request process is an ex parte proceeding that does not allow for any clarification of the facts, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. The onus is on the landlord to present evidentiary material that does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding.

Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request.

Section 12 (1) (b) of the Residential Tenancy Regulations establishes that a tenancy agreement is required "be signed and dated by both the landlord and the tenant." I find that the residential tenancy agreement submitted by the landlord is not dated by the landlord or the tenant, which is a requirement of the Direct Request process.

In this type of matter, not only must the landlord prove that they served the tenant with the 10 Day Notice as per Sections 71(2)(a) and 88 of the *Act*, they must also meet the requirements of the Direct Request process to have personal service witnessed by a third party. The landlord must also prove that the Notice of Direct Request Proceeding is served in accordance with the *Act* and the requirements of the Direct Request process.

On the second page of the Proof of Service Notice to End Tenancy, the signature of the person serving the 10 Day notice is the same as the signature of the person to confirm delivery of the 10 Day Notice.

In the absence of a signature by a third party witnessing service of the 10 Day Notice, I find that I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request process.

On the Proof of Service of the Notice of Direct Request Proceeding, the signature of the person serving the Notice is the same as the signature of the person witnessing delivery of the Notice of Direct Request Proceeding.

In the absence of a signature by a third party witnessing service of the Notice of Direct Request Proceeding, I find that I am not able to confirm service of the Notice of Direct Request Proceeding to the tenant, which is a requirement of the Direct Request process.

Since I find that the landlord has not met the unique requirements of the Direct Request Proceeding as he has not had a third party witness service of the documents and does not have a dated tenancy agreement, the landlord's application for an Order of Possession based on unpaid rent and a Monetary Order is dismissed, with leave to reapply.

Conclusion

I dismiss the landlord's application, with leave to reapply. The landlord is free to file an application for a participatory hearing.

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 02, 2015

Residential Tenancy Branch

