



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 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 August 16, 2015, at 1:30 PM, the landlord served the tenant "JM" with the Notice of Direct Request Proceeding by way of personal service via hand-delivery.

The landlord has not provided a signed Proof of Service of the Notice of Direct Request Proceeding for the tenant "JW" and has not established that tenant "JW" has been served the Notice of Direct Request Proceeding. Therefore, I dismiss the landlord's application against the tenant "JW" with leave to reapply. I will hear the landlord's application against tenant "JM" only.

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:

- One copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant "JM";
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant "JW" on May 30, 2015, indicating a monthly rent of \$600.00 due on the first day of the month for a tenancy commencing on May 30, 2015;

- A Monetary Order Worksheet showing the rent and utilities owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$696.63, comprised of unpaid rent owing for August 2015 in the amount of \$600.00, and unpaid utilities owing in the amount of \$96.63;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice) dated August 3, 2015, which the landlord states was served to the tenants on August 3, 2015 for \$600.00 in unpaid rent and \$96.63 in unpaid utilities, with a stated effective vacancy date of August 3, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of personal service via hand-delivery to the tenant "JW" on August 3, 2015. The Proof of Service form establishes that the service was witnessed by "RH" and a signature for "RH" 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 she 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.

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 of Direct Request Proceeding documents were served. Under the provisions of Policy Guideline #39 – Direct Requests, the onus is on the landlord to serve the Notice of Direct Request Proceeding in a manner approved under section 88 of the Act. Section 88 of the Act does permit a respondent to be personally served by hand. If service of the Direct Request Proceeding documents is completed in this manner, the landlord must prove the personal service by having the tenant acknowledge receipt of the Direct Request Proceeding documents by signing the Proof of Service form, or by having a witness provide a

name and signature on the Proof of Service form to attest to witnessing the service of the documents.

Policy Guideline #39 states that the landlord must complete and submit the proof of service form that was included as part of the landlord's Direct Request package. Although the landlord has attempted to prove service of the documents by stating that the service of the hearing documents was witnessed by a police officer, identified as "KT", a signature for "KT" does not appear on the Proof of Service of the Notice of Direct Request Proceeding to prove that "KT" attested to witnessing service of the documents.

I find that within the Direct Request Process, the landlord was obligated to prove service of the documents by completing the proof of service form that was included as part of the landlord's package. However, the landlord has not included a signature of the person, "KT", whom the landlord states witnessed the service of the documents. I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Direct Request Proceeding documents in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*.

As the landlord has not completed the proof of service form, by failing to include a signature for the witness, as required under the provisions of Policy Guideline #39, I find that the landlord has not established that the Direct Request Proceeding documents have been served in accordance with Policy Guideline #39. Based on the foregoing, I dismiss the landlord's application 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.

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: August 24, 2015

Residential Tenancy Branch

