



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 September 1, 2015, the landlord's agent "TG" served the tenant with the Notice of Direct Request Proceeding via registered mail.

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's agent and the tenant on November 1, 2010, indicating a monthly rent of \$600.00 due on the first day of the month for a tenancy commencing on November 2, 2010;
- 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 \$799.80 for unpaid rent, comprised of the balance of unpaid rent owing for the period of June 2015 to August 2015;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated August 20, 2015, which the landlord states was served to the tenant on August 20, 2015, for \$800.67 in unpaid rent due on August 1, 2015, with a stated effective vacancy date of August 31, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "TG" served the Notice to the tenant by way of leaving the Notice in the mail box of the rental unit on August 20, 2015. The Proof of Service establishes that the service was witnessed by "JB" and a signature for "JB" 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 landlords. Section 89 of the *Act* provides the approved methods by which an application for dispute resolution can be served. Section 89 provides, in part, as follows:

Special rules for certain documents

- 89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by 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;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

On the Proof of Service of the Notice of Direct Request Proceeding form, the landlord has indicated that the tenant was served with the Direct Request Proceeding documents by way of registered mail. If service of the Direct Request Proceeding documents is carried out in this manner, the landlord must provide evidentiary material, in the form of a Canada Post Registered Mail receipt which includes the tracking number, as proof of service via registered mail.

The landlord has not provided any documentary evidence, such as a Canada Post Customer Receipt containing the Tracking Number, to confirm the mailing and to demonstrate that the tenant was served with the Direct Request Proceeding documents by way registered mail.

I find that there is no evidentiary material before me to prove that the landlord served the Direct Request Proceeding documents by way of registered mail. The landlord has not provided a Canada Post Registered Mail receipt, and furthermore, the landlord has not included the name and signature of a witness on the Proof of Service form to confirm that service of the documents was carried out by way of registered mail. Therefore, I find that I cannot confirm that the tenant has been served with the Direct Request Proceeding documents in accordance with the *Act*.

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*.

Based on the foregoing, I find that the landlord has not proven service of the Notice of Direct Request Proceeding documents containing a copy of the application for dispute resolution in

accordance with the *Act*. 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.

Policy Guideline #39 provides information with respect to the framework of the Direct Request process. The guideline provides information with respect to the approved methods of service available to the landlord to serve the Notice to a tenant in accordance with the Direct Request process. Within the purview of the Direct Request process, service of the Notice by placing it in a mail box is not permitted. This information regarding service of the Notice is also included on the Proof of Service form, on which the landlord is notified that service via leaving the Notice in a mail box is not approved for the Direct Request process.

I find that by serving the Notice to the tenant by leaving it in the mail box of the rental unit, the landlord has not served the Notice in an approved manner in accordance with the Direct Request process as outlined in Policy Guideline #39. However, section 88(f) of the *Act* provides that a document can be served by leaving a copy in the tenant's mailbox. A Notice for unpaid rent can be served in this fashion if the landlord subsequently wishes to pursue an Order of possession based on the Notice by way of the regular dispute resolution process via a participatory hearing.

Given the manner in which the landlord served the Notice for unpaid rent, the landlord may wish to consider submitting any subsequent 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: September 08, 2015

Residential Tenancy Branch

